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Federal Register

Thursday
June 12, 1986

Briefings on How To Use the Federal Register—
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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 11; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Abram Primus 202-523-3419
Ina Masters 202-523-3419

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Seattle	206-442-0570
Tacoma	206-383-5230
Portland	503-221-2222

SAN FRANCISCO, CA

WHEN: July 24; at 1:30 pm.

WHERE: Room 2007, Federal Building,
450 Golden Gate Avenue,
San Francisco, CA.

RESERVATIONS: Call the San Francisco Federal Information Center, 415-556-6600

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Presidential Documents

Title 3—

The President

Proclamation 5500 of June 10, 1986

Youth Suicide Prevention Month, 1986

By the President of the United States of America

A Proclamation

Our youth are this Nation's hope for the future. Young people have so much to offer society and so much to hope for that their early death is always a keenly felt tragedy. That tragedy becomes even more poignant when a young person takes his or her own life.

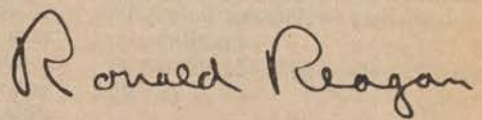
During the last three decades, youth suicide rates have tripled. Last year alone, approximately five thousand young people took their own lives, and many thousands more attempted suicide. Their actions left family and friends bereft, heartbroken, and often baffled.

The phenomenon of youth suicide is a national problem. To cope with it we must enlist the combined diagnostic and educational efforts of individuals, families, communities, churches, synagogues, private groups, and government agencies. We must learn to detect the early symptoms of suicidal tendencies and develop ways of helping those whose depression and despondency could lead to this terrible act. We must continue to combat those tendencies and influences such as the "drug culture" that preach despair and violence and generously offer help and counsel to young people beset with problems of adolescence. We should not neglect to pray for young people tempted to end their own lives as the "easy way out."

The Congress, by Senate Joint Resolution 266, has designated the month of June 1986 as "Youth Suicide Prevention Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of June 1986 as Youth Suicide Prevention Month. I call upon the Governors of the several States, the chief officials of local governments, and the people of the United States to observe such month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.



[FR Doc. 86-13443
Filed 6-11-86; 10:09 am]
Billing code 3195-01-M

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is amending its pay administration regulations to eliminate the requirement for a debt claim form "specified by OPM" when a creditor agency wishes to request recovery of a debt from an employee of another agency. These regulations are necessary to allow agencies greater flexibility in working out debt collection arrangements and to facilitate the collection of debts already certified by creditor agencies and awaiting further action.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On July 3, 1984, OPM published final regulations at 49 FR 27470 that implemented the salary offset provisions of 5 U.S.C. 5514. The final regulations specified what agency salary offset regulations should contain. They also established guidelines for requesting salary offsets when the debtor's creditor agency and the paying agency are not the same.

On November 25, 1985, OPM published proposed regulations at 50 FR 48421 to amend the debt collection procedures when the creditor and the paying agency are different. During the 30-day comment period on the proposed regulations, we received comments from one agency and three labor organizations. The agency supported the changes because they simplify the debt collection process without eliminating important employee protections. The labor organizations' comments are discussed below.

One labor organization commented that an employee should not be required to pay an alleged debt except when the debt is one acknowledged by the employee or reduced to a judgment by a court. The Debt Collection Act of 1982 provides general authority for administrative offset from salary to collect debts owed to the United States, while safeguarding the legitimate rights of privacy and due process of debtors. Under that law and the implementing regulations, any debtor may request a hearing to contest the validity or amount of the debt.

The other labor organizations commented that without the form specified by OPM, the paying agency would have no certification to furnish to employees as to the reason for the offset or to whom it is being paid, thus putting employees in the position of trying to contest "something that does not exist in writing." The final regulations (5 CFR 550.1108(a)(1)) require that the creditor agency "must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM." The written certification must be presented to the debtor's paying agency. Therefore, the paying agency will have a written statement of the details of the debt to present to the employee, if requested.

Except as noted below, the final regulations retain all existing requirements regarding the information to be certified and forwarded to the paying agency by the creditor agency. We have revised the final regulations to provide that (1) the creditor agency may advise the paying agency of either the amount or percentage of disposable pay to be collected in each installment, and (2) advice about the number of installments is optional. The regulations are further clarified by separating the responsibilities of the creditor and paying agencies into separate paragraphs.

To assist creditor agencies in complying with these certification requirements, OPM will publish a sample debt claim form through the Federal Personnel Manual system.

E.O. 12291, Federal Regulation

I certify that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices that affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Horner,
Director.

PART 550—PAY ADMINISTRATION (GENERAL)

Accordingly, OPM is amending 5 CFR Part 550 as follows:

Subpart K—Collection by Offset from Indebted Government Employees

1. The authority citation for Part 550 is removed and the authority citation for Subpart K is revised to read as follows:

Authority: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107.

2. Section 550.1106 is revised to read as follows:

§ 550.1106 Time limit on collection of debts.

Under 4 CFR 102.3(b)(3), agencies may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, with certain exceptions explained in that paragraph.

3. Section 550.1108 is added to read as follows:

§ 550.1108 Requesting recovery when the current paying agency is not the creditor agency.

(a) *Responsibilities of creditor agency.* Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment, and if the creditor agency wishes, the number and the commencing date of the installments (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency, the creditor agency also must advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the information specified in paragraphs (a)(1) through (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency.

(5) If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in § 550.1104(1). The paying agency must certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (c)(1) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(6) If the employee is already separated and all payments due from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*), or other similar funds, be administratively offset to collect the debt. (See 31 U.S.C. 3716 and the FCCS.)

(b) *Responsibilities of paying agency.*—(1) *Complete claim.* When the paying agency receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officially established pay interval. The employee must receive written notice that the paying agency has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) *Incomplete claim.* When the paying agency receives an incomplete debt from a creditor agency, the paying agency must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) *Employees who transfer from one paying agency to another.* (1) If, after the creditor agency has submitted the debt claim to the employee's paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of the employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

[FR Doc. 86-13312 Filed 6-11-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1476

Special Disaster Payments for the 1983-1985 Crops of Rice, Upland Cotton, Feed Grains, and Wheat

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: A proposed rule was published in the **Federal Register** on May 20, 1986 (51 FR 18552) which would amend the regulations at 7 CFR Part 1476 and make them applicable to the Commodity Credit Corporation's ("CCC") establishment of criteria with respect to special disaster payments which may be made available to eligible producers of the 1983 through 1985 crops of rice, upland cotton, feed grains, and wheat. The proposed rule also would establish the criteria for determining when CCC would make such discretionary disaster payments to eligible producers participating in the CCC price support and production adjustment programs established for the 1983 through 1985 crops. This final rule adopts the proposed rule with one change.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447-5621.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this final rule applies are: Title—Commodity Loans and Purchases; Number 10.051; as

found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

A proposed rule was published in the **Federal Register** on May 20, 1986 (51 FR 18552) which would amend the regulations at 7 CFR Part 1476 and make them applicable to the Commodity Credit Corporation's ("CCC") establishment of criteria with respect to special disaster payments which may be made available to eligible producers of the 1983 through 1985 crops of rice, upland cotton, feed grains, and wheat. The proposed rule also would establish the criteria for determining when CCC would make such discretionary disaster payments to eligible producers participating in the CCC price support and production adjustment programs established for the 1983 through 1985 crops.

Comments Received

Two comments on the proposed rule were received. One comment was from a State Department of Agriculture and one was submitted by a State Attorney General's Office on its own behalf and on the behalf of a law firm, a State, and the Attorneys General of seven States.

1. Both parties commented that the sixty percent yield loss threshold for establishing the existence of a natural disaster is unreasonable high. One party suggested that the sixty percent loss provision be reduced to a percentage contained in rules implementing other disaster programs or reduced to a percentage as characterized by certain Departmental Officials. It was also suggested that the sixty percent threshold should not apply to counties as well as producers in the county, and the special disaster payment eligibility determinations be made exclusively on a case by case basis.

These suggestions have not been adopted. The statutory authority for the program requires that the Secretary determine that losses from natural disasters must have created an "economic emergency" for the producers before making the authorized payments. While losses above the average seasonal fluctuations in productivity of 20 to 30 percent could create situations where the producer may have to implement certain management decisions to alleviate the effects of adverse natural conditions, it has been determined that the sixty percent threshold provides a proper measure of the occurrence of an economic emergency. "Economic emergency" suggests the occurrence of conditions much more severe than those that arise, not uncommonly, from adverse conditions of limited scope. A "Committee to Establish Special Disaster Payment Criteria," created in the Department determined nearly three years ago that the sixty percent figure was proper. The committee report was approved by the Secretary of Agriculture on October 17, 1983.

It is believed that special disaster payments properly should be made only as a last resort, and that Congress did not intend that producers rely on the special disaster program, rather than the Federal crop insurance program (See response to comments numbered 3) and other forms of assistance for protection. The availability of many forms of assistance, from private as well as public sources, makes the occurrence of an economic emergency requiring intervention by CCC rare.

2. Both parties commented that the proposed rule fails to establish any means for differentiating between losses on feed grains used as livestock feed and grains sold on the open market. Both parties commented that losses of feed intended for livestock are potentially more serious to the producer, who must pay for expensive feed to replace losses. In addition, one party indicated that livestock operations are more sensitive to drought conditions because of multiple impacts on feed grain and livestock. The statutory authority for this program does not provide for distinguishing between producers who sell grain on the open market and producers who produce grain for livestock feed. Meeting a producer's expectations related to feeding livestock or selling grain on the open market or any other economic decision of the producer would prove to be expensive and impossible to achieve fully.

It has been determined not to change these provisions of the proposed rule. This is not to deny that certain producers of feed grains who feed their own production to livestock may have to purchase grain in the market when adverse conditions occur.

It is also true, however, that livestock producers may be able to salvage the silage value of a crop affected by a disaster, whereas producers who sell feed grains only for cash are less likely to obtain such a benefit. In addition, certain producers are more likely than others to "forward contract," i.e., contract before harvest to sell their production. If such producers' crops are destroyed, the producers not only lose the value of the crops, they must purchase commodities on the market, possibly at a price higher than the forward contracting price, to fulfill their contractual obligations. Forward contracting is more prevalent among producers of some commodities than others, and occurs with increasing frequency as the growing season progresses. The special disaster payment criteria simply cannot take into account all economic decisions made by producers. In accordance with the statutory authorities for the program, the program is based on loss of production.

3. Both parties commented that the proposed rule fails to provide special disaster payments where no crop insurance covered the loss because of transitional problems attendant to the Federal Crop Insurance Program. One party suggested that the Federal Crop Insurance Corporation (FCIC) was in a transitional stage in 1983, a period covered by the proposed rule. At the time of the 1983–1985 period covered by the proposed rule, Federal Crop Insurance was available on every crop to which the special disaster program applies in every county where the crop was produced as an agricultural commodity. The transitional phase characterized by the Act had been completed. The unlimited availability of discretionary disaster payments would severly jeopardize the FCIC insurance program since producers would not have an incentive to purchase insurance if free crop insurance in the form of discretionary disaster payments is available. Such a result would affect adversely the actuarial soundness of the FCIC insurance program. Accordingly, to ensure a viable and actuarially sound FCIC crop insurance program, while providing adequate assistance to producers who have been subjected to a natural disaster for which adequate insurance is not available, CCC must require that Federal Crop Insurance cover the affected crop if available. Therefore, the availability of crop insurance as one of the criteria used to determine if an economic emergency

exists will remain a condition of determining producer eligibility.

4. Both parties commented that the requirement of the proposed rule that Governor of the State must request a special designation within ninety days of the last day of the occurrence of the natural disaster is improper. In determining individual producer eligibility to participate in the special disaster payment program, the approving official must take into consideration evidence of crop losses. It is the position of the Department that if an extended time beyond the 90 day period as described in the proposed rule were allowed, the evidence of crop disaster may not be such as to be reasonably appraised for loss. The Department has always required crop appraisals for disaster purposes. That policy gives the producer every reasonable opportunity to have the appropriate appraisal performed while evidence of the crop is still available to the approving official. Therefore, the proposed rule provided for the Governor of the State to request a special designation within 90 days of the last day of the occurrence of the natural disaster. However, the Department recognizes that this requirement, as applied to preceding crop years, could be unfair. Accordingly, the rule has been amended to provide that CCC may waive the requirement that the Governor request designation within 90 days, if CCC determines that the extent of loss can reasonably be ascertained.

5. One party suggested that the proposed rule does not include a payment rate for soybeans. There is no statutory authority for the conducting of a special disaster program for the 1982–1985 crops of soybeans. There is, therefore, no need to establish a payment rate for soybeans under the program.

6. One party suggested that Emergency loans that are made available by the Farmers Home Administration not be included in determining whether Federal assistance is sufficient to alleviate the effects of a natural disaster. It has been determined that such assistance should be included, as it is the purpose of such assistance to alleviate such emergencies.

7. One party argued that the payment rate was required to be computed on the basis of one half the established price for deficiency in production below 60 percent for the affected crop. The described payment rate, however, applies only to "regular" disaster payments. Accordingly, it has been determined that the payment rate provided in the proposed rule is proper and should be adopted.

8. One party stated that the program should apply to crop years prior and subsequent to the 1983 through 1985 crop years. The statutory authority for this program extends only to the 1982 through 1985 crops. These regulations are published pursuant to a court order in the case of *The State of Iowa, et al.* v. *John R. Block, Secretary of Agriculture, et al.*, 771 F.2d 347, (8th Cir. 1985). It has not been ordered that the program be implemented for the 1982 crop year. The Food Security Act of 1985 does continue, through 1990, the authority for a program of this nature. However, this rule is limited to the above stated crop years.

Based upon a review of the comments received it has been determined that the proposed rule should be adopted as a final rule with one amendment, heretofore described.

The information collection requirements of this subpart shall be submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and it is anticipated that an OMB Number will be assigned.

List of Subjects in 7 CFR Part 1476

Indemnity payments.

Final Rule

Accordingly, Part 1476 of title 7 of the Code of Federal Regulations is amended by adding a new Subpart entitled "Special Disaster Payments for the 1983–1985 Crops of Rice, Upland Cotton, Feed Grains, and Wheat".

PART 1476—[AMENDED]

Subpart—Special Disaster Payments for the 1983–1985 Crops of Rice, Upland Cotton, Feed Grains, and Wheat

Sec.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, 1072, as amended (15 U.S.C. 714b and 714c); Sec. 101, 103, 105B, and 107B of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 95 Stat. 1234, as amended, 1242 as amended (7 U.S.C. 1441, 1444, 1444d, and 1445b-1).

§ 1476.120 Special disaster payments

(a) If special disaster payments are available to producers participating in the 1983 through 1985 price support and production adjustment programs authorized by this title, in accordance with Part 795 of this title, the total amount of disaster payments which a person shall be entitled to receive annually under the rice, upland cotton, corn, grain sorghum, oats, barley, and wheat programs shall not exceed $100,000.

(b) For purposes of §§ 1476.120–1476.127:

(1) "Economic emergency" means a loss of 60 percent or more of the value of all crop production, including hay and pasture, of producers on the farm and in the county, respectively;

(2) "Insufficient assistance to alleviate the economic emergency" means an economic loss of 60 percent or more on the farm and in the county, respectively, after taking into consideration:

(i) The value of agricultural commodities produced on the farm and in the county, respectively, during the applicable crop year; and

(ii) Any Federal assistance provided to producers on the farm and in the county, respectively, including, but not limited to, the value of any Federal crop insurance indemnity coverage available to producers in the county, land diversion payments, deficiency payments and noncash payments including in kind compensation; and

(3) "Natural disaster or other conditions beyond the control of the producers" means an occurrence which results in a yield reduction of at least 60 percent as the result of adverse weather or other similar condition.

(c) References to the Administrator and the Secretary include such individual and any individual who has been delegated the authority to perform the duties of the Administrator and Secretary in implmenting the provisions of this subpart.

§ 1476.121 Availability of special disaster payments in a county.

(a) Disaster payments may be made to producers on a farm when the Administrator determines that:

(1) As the result of drought, flood, or other natural disaster, or other conditions beyond the control of the producers in a county, such producers have suffered substantial losses of production for the crop year:

(i) Because the producers were prevented from planting applicable program crops or other nonconserving crops; or

(ii) Due to reduced program crop yields.

(2) Such losses have created an economic emergency in the county;

(3) Federal crop insurance indemnity payments and other forms of assistance made available by the Federal Government to producers in the county for such losses provide insufficient assistance to alleviate the economic emergency; and

(4) In accordance with paragraph (b) of this section, additional assistance must be made available to such producers to alleviate the economic emergency in the county.

(b) Producers in a county shall be eligible for payments made in accordance with §§ 1476.124–1476.126 if:

(1) A natural disaster or other condition beyond the control of the producers in the county has substantially and adversely affected producers in the county; and

(2) A written request from the State Governor for a special disaster designation has been received by the Secretary within 90 days of the last day of the occurrence of the natural disaster, except that CCC may waive the requirement that the Governor's request be received within 90 days if it is determined by CCC that the extent of loss in the affected area reasonably can be ascertained as of the date the request is received; and

(3) The Administrator determines that unusual and adverse weather conditions or other causes beyond the control of producers, excluding flooding within flood plains or in flowage easement areas, have resulted in substantial crop production losses resulting in an economic emergency.

§ 1476.122 Designation by the Secretary of Agriculture.

(a) The Secretary of Agriculture may designate a county as a county eligible to receive special disaster payments when the requirements of § 1476.121 are met.

(b) Upon receipt of the Governor's request made in accordance with § 1476.121(b)(2), the Governor's request shall be acknowledged, and if any delay is anticipated in processing the request, the acknowledgment shall state the reasons for such delay and when action will be taken.

(c) The State Executive Director, ASCS, in the role of the Food and Agriculture Council ("FAC") Vice Chairperson, Emergency Programs will immediately:

(1) Notify the local FAC to prepare a Damage Assessment Report ("DAR") in accordance with the Emergency Operations Handbook ("EOH") for the requested county; and

(2) Review each DAR and forward such DAR to the Deputy Administrator which a transmittal memorandum containing views, comments, and recommendations concerning the need or lack of need for special disaster payments to be made available.

(d) The local FAC Chairperson of an affected county shall foward DAR's to the FAC, Vice Chairperson, Emergency Programs. The DAR's shall be completed in accordance with instructions issued by the Deputy Administrator.

(e) Reports submitted in accordance with this section and any other evidence determined by the Administrator to be relevant shall be used to determine whether the requirements of § 1476.123 have been met. Such a determination shall take into consideration, but not be limited to, the value of all corps, including hay and pasture, in the affected county, the value of crop insurance available in the county (determined by multiplying the greater of (1) the acreage planted for harvest, or if a production adjustment program is in effect for the commodity, (2) the total permitted acreage for the commodity for the county, by the highest indemnity available for each commodity in the county at the 65 percent coverage level made available in accordance with Section 508(b) of the Federal Crop Insurance Act), and other Federal assistance available in the county.

(f) The Manager of the Federal Crop Insurance Corporation shall determine whether crop insurance offered under the Federal Crop Insurance Act is available to producers in the affected county and whether the coverage afforded by the insurance which is available is adequate to indemnify the producers in such county for the damage incurred as a result of the disaster.

(g) The Administrator will review DAR's all other pertinent data, the State Executive Director's recommendations, and the determinations made in accordance with paragraph (f) of this section. Based upon this data, a determination of whether an economic emergency exists shall be made in accordance with § 1476.123.

§ 1476.123 Determination of economic emergency.

(a) In determining whether an economic emergency exists in a county, the total value of all crops, including hay and pasture, grown in the county shall be taken into consideration. The total value of such crops shall be determined by converting yield losses into dollar losses in the manner specified in this section. In making such a determination, the following criteria shall be used:

(1) The value of crops produced in the county during normal years shall be determined by multiplying a normal year's yield for each commodity by a normal year's price for each such commodity.

(2) The normal year's yield for each commodity shall be the average yield in the county for such commodity based upon each of the 5 years immediately preceding the year in which the disaster occurred.

(3) The normal year's price for each commodity shall be the average of the market prices for each such commodity based upon the 3 years immediately preceding the year in which the disaster occurred.

(4) Yields, crop acreage, and price data used to establish the normal year's production shall be determined by the Administrator and, to the extent practicable, shall be obtained from the Statistical Reporting Service ("SRS"), USDA.

(5) Yields, crop acreages, and price data used to establish the disaster year's production shall be determined by the Administrator and may be obtained from the DAR's submitted in accordance with § 1476.122 or, if available, the actual production data for such year as determined by SRS except as otherwise provided in §§ 1476.120–1476.126.

(b)(1) The gross income for each commodity for the year in which the disaster occurred shall be determined by multiplying the total acres of the crop of each commodity planted in the county in the disaster year by the price of the commodity by the disaster year's yield for the crop. The gross income for the county will be the total of the individual commodity computations.

(2) The gross income for each commodity for the normal year shall be determined by multiplying the total acres planted and intended to be planted in the county in the disaster year by the price of the commodity by the normal year's yield for the crop. The gross income for the county will be the total of the individual commodity computations.

(3) A gross income gain will exclude the county from consideration. The gross income loss experienced in the county in the disaster year shall be determined by substracting the disaster year's gross income from the normal year's gross income.

(4) The gross income loss determined in accordance with paragraph (b)(3) of this section shall be adjusted by the following:

(i) The total value of the Federal crop insurance available in the county (determined by multiplying the greater of (A) the acreage planted for harvest or, if a production adjustment program is in effect for the commodity, (B) the total permitted acreage for the commodity for the county, by the highest indemnity available for the commodity in the county at the 65 percent coverage level made available in accordance with section 508(b) of the Federal Crop Insurance Act). The total FCIC adjustment will be the total for all commodities for which crop insurance is available in the county;

(ii) The value of all noncash payments, including in kind compensation, provided in the county;

(iii) The total value of Farmers Home Administration loans made available for the same disaster losses of crop production;

(iv) The value of any special emergency haying or grazing of acreage diverted to the acreage conservation reserve under the commodity production adjustment programs, or acreage subject to a contract under the Water Bank Program;

(v) The value of any emergency livestock feed made available in the county;

(vi) The value of any land diversion payments and deficiency payments made with respect to the crop; and

(vii) The value of any other forms of assistance made available by the Federal Government to such producers in a county for the same disaster losses of crop production.

(c) To determine whether a sufficient percentage of loss exists to constitute insufficient assistance to alleviate the economic emergency in the county, as defined in § 1476.120 to make a county eligible for special disaster payments, the adjusted gross income loss shall be divided by the normal year's gross income.

§ 1476.124 Producer eligibility.

(a) If the Secretary determines that the county has met the conditions set forth in §§ 1476.122 and 1476.123, the county committee may be authorized to make payments available to only those producers on a farm for which the operator of the farm:

(1) Submits a Form ASCS–574, Application for Disaster Credit, in the case of a reduced yield application or a Form ASCS–574–1, Prevented Planting Claim, in the case of a prevented planting application, in accordance with instructions issued by the Deputy Administrator;

(2) Submits a report in accordance with the provisions in § 1476.125;

(3) Meets the economic emergency requirements in § 1476.125; and

(4) Applies for payment on a form prescribed by the Deputy Administrator.

(b) Special disaster payments are authorized to be made to producers of wheat, corn, grain sorghum, oats, barley, upland cotton, and rice only if:

(1) For a crop of a commodity for which a production adjustment program has been established, such producer is in compliance with the regulations set forth at Parts 713 and 770 of this title.

(2) The producer had a Federal Crop Insurance Policy in effect on at least a part of the affected program crop acreage if such insurance is available for purchase by producers in the county; and

(3) The operator of the farm has complied with the requirements in paragraph (a) of this section; and

(4) The producer submits a report of any indemnity payments received for crops produced on the farm, and any other assistance made available by the Federal Government to such producers for such losses.

(c) In addition to the requirements of paragraph (b) of this section, the county committee must also determine that the operator and other producers were prevented from planting an eligible commodity or other nonconserving crop, or that the production of an eligible commodity on an acreage resulted in a reduced yield of such commodity, because of a drought, flood, other natural disaster or other condition byond the control of the producers.

§ 1476.125 Determination of economic emergency for a producer.

(a) In determining whether a producer has suffered a loss which constitutes an economic emergency, the total value of all crops produced on the farm, including hay and pasture, will be taken into consideration. The total value of such crops shall be determined by converting yield losses into dollar losses in accordance with this section.

(b)(1) The value of crops produced on the farm during normal years shall be determined by multiplying a normal year's yield for each commodity by a normal year's price for each such commodity.

(i) The normal year's yield for each commodity shall be the farm program payment yield established for program crops and, with respect to other crops, the yield established by the county committee in accordance with instructions issued by the Deputy Administrator taking into consideration actual production on the farm in the five years immediately preceding the disaster year and the average yields of such crops in the county for such years.

(ii) The normal year's price for each commodity shall be the average of the market prices for each such commodity based upon the 3 years immediately preceding the year in which the disaster occurred.

(2) The value of production from any acreage for the disaster year shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and shall be added to the actual production.

(ii) The production from acreage which is harvested shall be the actual production of the farm. The farm program payment yield established in accordance with § 713.6 of this title shall be used with respect to any acreage for which production cannot be determined. If the county committee determines that the acreage of a farm was affected by a natural disaster, the farm yield with respect to such acreage shall be the larger of 60 percent (75 percent for upland cotton and rice) of the farm program payment yield established in accordance with § 713.6 or the actual yield from the harvested acreage of the crop.

(iii) Producers shall report the production and disposition of all crops produced on the farm, including hay and pasture, in accordance with instructions issued by the Deputy Administrator.

(A) If there has been a disposition of crop production through commercial channels, the producer must furnish documentary evidence of such disposition in order to verify the information provided on the report. Acceptable evidence shall include such items as the original or copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries.

(B) If there has been disposition of crop production other than through commercial channels, the producer must furnish such documentary evidence as the county committee determines to be necessary in order to verify the information provided on the report. If the producer utilized any of the crops produced on the farm as feed, the producer must provide the number and type of livestock fed, the duration of the feeding period, the type of feed, and other documentation to substantiate the production on the farm in the disaster year.

(iv) Prices of commodities used to establish the disaster year's production will be the higher of the price the

producer actually received for the crop or the average of the prices received by producers in the county as determined in accordance with instructions issued by the Deputy Administrator.

(3)(i) The gross income for each commodity for the year in which the disaster occurred shall be determined by multiplying the total acres of each commodity planted or intended to be planted which were affected by the disaster by the price of the commodity for the disaster year by the disaster year's yield for each crop. The gross income for the farm will be the total of the individual commodity components.

(ii) The gross income for each commodity in the normal year shall be determined by multiplying the total acres planted and intended to be planted on the farm in the disaster year by the price of the commodity by the normal year's yield for the commodity. The gross income for the farm will be the total of the individual commodity components.

(iii) A gross income gain will exclude the producer from consideration. The gross income loss experienced by the producers on the farm shall be determined by subtracting the disaster year gross income from the normal year's gross income.

(iv) The gross income loss determined in accordance with paragraph (a)(3)(iii) of this section shall be adjusted to the following:

(A) The total value of the Federal crop insurance available for the farm (determined by multiplying the greater of (*1*) the acreage planted for harvest or, if a production adjustment program is in effect for the commodity, (*2*) the total permitted acreage for the commodity on the farm, by the highest indemnity available for the commodity in the county at the 65 percent coverage level made available in accordance with section 508(b) of the Federal Crop Insurance Act). The total FCIC adjustment will be the total for all commodities for which crop insurance is available on the farm whether or not the producer elected to purchase such crop.

(B) The value of all noncash payments, including in kind payments, received by such producer;

(C) The total value of Farmers Home Administration loans made available for the same disaster losses of crop production;

(D) The value of any special emergency haying or grazing of acreage diverted to the Acreage Conservation Reserve under the commodity production adjustment programs, or acreage subject to a contract under the Water Bank Program;

(E) The value of emergency livestock feed made available to such producers;

(F) The value of any land diversion payments and deficiency payments made with respect to the crop; and

(G) The value of any other forms of assistance made available by the Federal Government to the producer for the same disaster losses of crop production.

§ 1476.126 Special disaster payments to producers

(a) *Applicability.* Special disaster payments may be made to eligible producers as soon as practicable after the extent of the crop loss is determined and payment is approved. Special disaster payments shall not exceed the amount necessary to alleviate the economic emergency of the producer on the farm, as defined in § 1476.120.

(b) *Prevented planting.* Producers who were prevented from planting a program crop shall receive special disaster payments in accordance with this section.

(1) *Payment rate.* The prevented payment rate is one-third of the established (target) price as provided for in § 713.106.

(2) *Acreage Eligible for Payment.* Acreage in flood plains or flowage easement areas is ineligible acreage for special disaster payment purposes. The acreage eligible for payment shall equal the smaller of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster or other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the crop that was planted or prevented from being planted in the previous year;

(iii) For crops for which an acreage reduction or set-aside requirement is in effect or on farms participating in a land diversion or wheat grazing and hay program, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year; or

(iv) The acreage for which crop insurance under the Federal Crop Insurance Act is not available.

(3) *Payment Computation.* Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm program payment yield as determined in accordance with § 713.6 by the prevented planting payment rate.

(c) *Reduced Yield.* Producers on farms on which the yield of the program crop planted for harvest is reduced shall receive payments in accordance with this paragraph.

(1) *Payment rate.* The reduced yield payment rate is one-third of the established (target) price for upland cotton and rice and one-half of the established (target) price for barley, corn, grain, sorghum, oats, and wheat as provided for in § 713.106.

(2) *Payment Computation.* Reduced yield payments shall be determined for each crop by multiplying the reduced yield payment rate times the smaller of the result of the following computations:

(i) The result determined by multiplying the acreage of the crop on the farm by 60 percent (75 percent for upland cotton and rice) of the farm yield as provided in § 713.6, and subtracting the determined production for the farm therefrom; or

(ii) The result determined by multiplying the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm yield as provided in § 713.6, and subtracting the determined production for the eligible acreage therefrom.

§ 1476.127 OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1476) have been approved by the office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Signed at Washington, DC on June 9, 1986.

Milton J. Hertz,

Acting Executive Vice President Commodity Credit Corporation.

[FR Doc. 86-13308 Filed 6-9-86; 5:13 pm]

BILLING CODE 3410-05-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Farm Credit System Capital Corporation; Organization; Extension of Comment Period

AGENCY: Farm Credit Administration.

ACTION: Final Rule; comment period extension.

SUMMARY: The Farm Credit Administration ("FCA") published final regulations with request for comments in the **Federal Register** on March 13, 1986, (51 FR 8665), 12 CFR 611.1140–1142, applicable to the Farm Credit System Capital Corporation ("Corporation")

established under the Farm Credit Amendments Act of 1985 ("1985 Amendments") chartered by the FCA on February 24, 1986, pursuant to § 4.28A of the Farm Credit Act of 1971, as amended ("1971 Act"). The FCA hereby gives notice that the comment period is extended.

DATE: The period for receipt of written comments is hereby extended to August 18, 1986.

ADDRESS: All comments should be submitted in writing to Frederick R. Medero, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of the General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Peoples, Senior Attorney, Office of the General Counsel, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: Since the publication of the final regulations relating to the Corporation on March 13 1986, the FCA received comments from several parties, including the Corporation, requesting additional time to respond to the regulations. The FCA extended the comment period until May 30, 1986 (51 FR 16291). The Corporation has now requested an additional extension of the period to make comments. The FCA Board has determined that a further extension of the comment period would be beneficial in ensuring that all interested parties have an opportunity to comment on the final regulations, and has extended the comment period to coincide with the period specified for the final regulation relating to Corporation assessments which have been published for comment. Accordingly, the FCA Board has ordered an extension of the period for public comment on regulations related to the Corporation ending August 18, 1986.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration Board.

[FR Doc. 86-13119 Filed 6-10-86; 1:46 pm]

BILLING CODE 6705-01-M

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12 CFR Part 611

Organization; Farm Credit System Capital Corporation; Funding

AGENCY: Farm Credit Administration.

ACTION: Final rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA) has promulgated final regulation § 611.1142(h) applicable to the funding activities of the Farm Credit System Capital Corporation (Corporation) established under the Farm Credit Amendments Act of 1985 (1985 Amendments) and chartered by the FCA on February 24, 1986, pursuant to section 4.28A of the Farm Credit Act of 1971, as amended (Act). The Corporation superseded and succeeded to the assets and liabilities of the Farm Credit System Capital Corporation chartered by the FCA on June 6, 1985, and dissolved by the FCA following the chartering of the Corporation.

DATES: Effective June 13, 1986. Written comments must be received on or before August 18, 1986.

ADDRESS: Submit comments in writing to Frederick R. Medero, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4025.

SUPPLEMENTARY INFORMATION: Under the 1985 Amendments enacted on December 23, 1985, Congress directed the FCA to charter the Corporation within 60 days for the purpose of carrying out a program of financial and technical assistance to Farm Credit System (System) banks and associations (hereinafter referred to as institutions) and their borrowers. The Corporation is empowered to acquire, hold, restructure, collect, and otherwise administer nonperforming assets (including loans and acquired property) from System institutions, and to provide financial and technical assistance to System institutions. Congress intended that the Corporation serve as a vehicle through which System institutions will assist each other by transferring their substantial surplus to those institutions in greatest need of capital.

The FCA issued the charter for the Corporation on February 24, 1986, and published final regulations, effective March 10, 1986, providing for the organization and operations of the Corporation (51 FR 8665, March 13, 1986). Section 611.1142 of those regulations addresses the powers of the Corporation. Paragraph (h) of § 611.1142 was reserved in order for the FCA to finish development of related regulations regarding capital adequacy of System institutions. There is a linkage between the capital adequacy regulations and § 611.1142(h) since the ability of System institutions to contribute funds to the Corporation is closely related to the institutions' capital positions.

The 1985 Amendments authorize the Corporation to fund its programs of financial and technical assistance by assessing System institutions and by requiring System institutions to purchase the Corporation's capital stock and debt obligations. Section 4.28G(15) of the Act requires the FCA to establish regulations that ensure that the System's "available capital and reserves" are committed to providing financial assistance to System institutions experiencing financial difficulties. In determining available capital and reserves, capital stock, participation certificates, and allocated equities held by borrowers that are not associations chartered under the Act were excluded from assessment by the Corporation. The FCA was directed under the Act to establish criteria that provide for an equitable sharing among System institutions of the burden of providing funds to the Corporation. In addition, the Act required that such criteria ensure that contributing institutions remain able to provide credit to eligible borrowers on reasonable and competitive terms and to obtain funds on the public financial markets.

Section 4.28G(14) of the Act directs the Corporation to obtain funds from System institutions using transactions that provide for repayment of contributed funds on reasonable terms from the surpluses accumulated by the Corporation. Accordingly, § 611.1142(h) authorizes the Corporation to assess System institutions only for purposes of paying the Corporation's operating expenses, which are defined to include all expenses incurred in the normal operation of the Corporation, including salaries, cost of space, and other operating budget expenses. Payments of direct financial assistance to eligible System institutions and purchases of eligible loans and acquired property by the Corporation are not operating expenses and must be funded with proceeds from the issuance of the Corporation's obligations. Section 4.28G(14) of the Act prohibits the Corporation from assessing System institutions for interest expense incurred on obligations issued by the Corporation, either in its own name or jointly with other System institutions. Accordingly, § 611.1142(h)(4) provides that the Corporation may issue obligations to pay interest expenses on

its outstanding obligations or on debt obligations it has assumed in purchasing eligible loans and acquired property.

Section 611.1142(h)(2) requires the Corporation to provide a written notice to each System institution that is assessed or required to purchase the Corporation's obligations. The notification must describe the nature of the funding transaction, the purpose and amount of the transaction, and transfer and accounting information. Each institution receiving a notification is required to pay the assessment or purchase the obligations no later than 10 days after the date of the notification and in the manner directed by the Corporation.

Section 611.1142(h)(6) provides that the Corporation can determine each institution's ability to pay based, in part, on the institution's level of unallocated retained earnings, which consist of the institution's total capital minus capital stock, participation certificates, and equities allocated to borrowers that are not associations. The level of unallocated retained earnings is the basis for determining the unallocated retained earnings percentage of an institution and its placement in one of four regulatory zones, designated A through D. Section 611.1142(h)(4) establishes circumstances in which the FCA may adjust the unallocated retained earnings level of an institution for purposes of determining its ability to pay assessments or purchase obligations. There are circumstances in which an institution may possess additional financial resources that are not reflected in its reported level of unallocated retained earnings or situations where the institution has taken discretionary actions that have the effect of circumventing its responsibility to provide funds to the Corporation. In those instances, the FCA may require an institution to adjust its unallocated retained earnings for assessment purposes. For example, when the FCA determines that an institution's allowance for loan losses is not established in accordance with generally accepted accounting principles, the amount in the allowance that exceeds the amount required by generally accepted accounting principles will be considered unallocated retained earnings for assessment purposes.

As provided for in the Act, the Corporation shall obtain all of the available capital and reserves of the System that are necessary for the Corporation to carry out its chartered purposes. The regulation establishes a two-stage process for the Corporation to follow that will delay the adverse effect of contributions on the weakest institutions until such time as the System's financial condition has deteriorated to the point that such contributions are necessary.

The Corporation must first assess and require purchases of obligations from institutions that have capital at or above the lower level of a Zone C institution. This zone of unallocated retained earnings is the lowest which the FCA deems adequate for each individual institution during the period of operation of the Corporation. If and when all institutions are at or below the lower level of Zone C and the Corporation needs additional funds to operate and provide financial and technical assistance to institutions, it may then assess all institutions in relation to their remaining unallocated retained earnings.

The Act requires that the assessment regulations: (1) Provide for an equitable sharing of the burden among institutions, (2) ensure that the financial positions of institutions providing funds are maintained so that reasonable and competitive credit continues to be available to System borrowers, and (3) ensure that each bank is able to borrow and repay funds in the public financial markets. In providing for an equitable sharing of the burden of assessments or purchases, the Corporation must consider the institutions' relative financial strength and ability to pay, the effect on loan interest rates of each System institution, and the impact of prior assistance provided to institutions.

Section 611.1142(h) addresses those concerns in several ways. Section 611.1142(h)(6) requires the Corporation, in equitably distributing the burden, to first assess those institutions classified in Zone C and above, as those institutions have the greatest capacity to provide assistance. Section 611.1142(h)(7) further requires the Corporation to annually redistribute outstanding obligations to ensure that no institution hold more than its proportionate share of obligations based on its financial strength.

Section 611.1142(h)(6) requires the Corporation to develop procedures for determining which System institutions will be required to provide funds. The Corporation is required to obtain funds based on each contributing institution's relative financial strength and ability to pay, taking into consideration the criteria contained in § 611.1142(h)(6) (i) through (iii) which considers the effect that obtaining funds has on borrowers and the contributing institution's ability to continue to provide credit. These requirements are designed to ensure that financially stronger System institutions bear a greater share of the burden of providing funds to the Corporation until the available capital and reserves of all institutions have been utilized. In taking those factors into consideration, as the relative financial strength of the entire System declines, the impact of assessments on individual institutions must be weighed against the increasing funding needs of the Corporation and the relative financial strength of each System institution when compared with the other institutions in the System.

Section 611.1142(h)(6)(i) requires the Corporation to consider the effect of obtaining funds from an institution on the lending rates charged by the contributing institution. The criteria contained in § 611.1142(h)(6)(i) are factors that the Corporation must take into consideration in making assessments or requiring purchases of obligations but are not factors that would preclude assessments or require purchases of obligations from any institution that has available capital and reserves, has a positive level of adjustable loanable funds (§ 611.1142(h)(6)(ii)), and is able to satisfy the bond collateral requirements contained in section 4.3 of the Act (§ 611.1142(h)(6)(iii)).

Section 611.1142(h)(6)(i) recognizes that institutions with levels of unallocated retained earnings provided for in Zones A and B are strongly capitalized and need not increase the lending rate charged to current borrowers to provide funds to the Corporation. While it is possible that such institutions could record reduced earnings or incur operating losses as a result of contributing funds to the Corporation, these institutions can reduce their level of unallocated retained earnings and remain adequately capitalized without increasing their lending rate. Therefore, obtaining funds from institutions in Zones A and B is deemed not to affect the lending rates of borrowers. Institutions in Zone C that charge below average lending rates are in a position to increase their lending rate, if necessary, to provide funds to the Corporation. Institutions classified in Zone C could be adversely affected by providing funds to the Corporation if the institutions already charge lending rates that are above the average rate charged by other institutions in Zone C chartered under the same title of the Act. In such instances, the Corporation is required to consider the effect that requiring the institution to provide funds would have on the contributing institution's borrowers.

Section 611.1142(h)(c)(ii) requires the Corporation to consider the impact of assessments on any System institution whose "adjusted loanable funds" are not positive. Loanable funds, which measure an institution's future earnings capacity, are adjusted to take into consideration the institution's ability to sell nonaccrual loans and acquired property to the Corporation. However, the amount of this adjustment is limited by the ability of the institution to absorb the losses associated with disposition of the assets and still meet the capital adequacy requirements of Zone C. The use of a "zero" level of loanable funds is consistent with prior FCA and System studies that have used the loanable funds criterion as a measure for differentiating between viable and nonviable institutions.

Section 611.1142(h)(c)(iii) provides that the Corporation may not assess or require an institution to purchase obligations if providing funds would cause the contributing institution to lose access to funds in the public financial markets or the ability to satisfy the liability on its own obligations. This criterion, which applies only to System banks, is met as long as the institution maintains eligible collateral to fully collateralize the obligations it issues as is required by section 4.3 of the Act.

The regulation contains references to zone classifications and related levels of unallocated retained earnings that will be contained in the capital adequacy regulations. Appendix I to § 611.1142(h) shall be used by the Corporation in applying this regulation until the capital adequacy regulations are effective.

Section 611.1142(h) is adopted as a final regulation consistent with the adoption of prior regulations regarding the Corporation that were published on March 13, 1986 (51 FR 8665). In adopting this regulation as a final regulation, the FCA noted that the Act requires that regulations be in effect before the Corporation can exercise all of the powers which Congress conferred under the Act. The agency has determined that in light of the congressional directive in the Amendments that the Corporation be chartered within 60 days of enactment of the 1985 Amendments and be operational as soon as possible thereafter, public notice and publication for comment are impracticable, unnecessary, and contrary to the public interest. For the same reasons, the FCA has waived the 30-day period otherwise applicable under subparagraph (b)(1) of section 5.17 of the Act. In accordance with 12 U.S.C. 2252(b)(2), the regulation is effective immediately. Although the regulation will be effective immediately, the public has been afforded a period of 30 days from the date of publication to submit written comments to the FCA.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

This regulation is hereby adopted by the Farm Credit Administration the 5th day of June 1986.

Frank W. Naylor, Jr.,

Chairman.

As stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations, is being revised as follows:

1. The authority citation for Part 611, Subpart J, continues to read as follows:

Authority: Secs. 4.28A–4.28L, 5.17, Pub. L. 99–205, 99 Stat. 1678.

2. Section 611.1142 is amended by adding new paragraphs (h) and (m) and by adding new paragraph (l)(9) to read as follows:

PART 611—ORGANIZATION

Subpart J—Farm Credit System Capital Corporation

* * * * *

§ 611.1142 General corporate powers.

* * * * *

(h) Funding. This paragraph establishes criteria and limitations under which the Corporation may assess System institutions to pay the Corporation's operating expenses, except interest expense; and require System institutions to purchase the Corporation's capital stock and debt obligations collectively termed "obligations," which are issued to enable the Corporation to provide direct financial assistance to System institutions experiencing financial difficulties and to purchase eligible loans and acquired property from System institutions.

(1) For purposes of this paragraph, the following definitions shall apply:

(i) "Adjusted loanable funds" means loanable funds adjusted by an amount representing the proceeds which the institution could receive from sale of all loans and acquired property eligible to be sold to the Corporation. These adjustments shall be equal to 80 percent of the book value of loans and acquired property eligible for sale to the Corporation, provided that such amount shall not exceed the amount that would cause the institution's unallocated retained earnings percentage to fall below the level required for classification as a Zone C institution if the institution sold eligible loans and acquired property to the Corporation.

(ii) "Allowances for losses" means the allowance for losses on loans (Account 420); allowance for losses on investments in paid-in surplus—PCA (Account 422); allowable for losses on loans in process of foreclosure, judgments, etc. (Account 424); allowance for losses on acquired property (Account 428); and any other valuation account established and maintained in accordance with Farm Credit Administration instructions or approval.

(iii) "Available capital and reserves" shall have the same meaning as "unallocated retained earnings" for Federal land banks, Federal land bank associations, production credit associations, and banks for cooperatives. For Federal intermediate credit banks, "available capital and reserves" means "unallocated retained earnings" increased by legal reserve—PCAs less impairment (Accounts 456–10 and 459).

(iv) "Average loan rate" means the average of all loan rates charged by a System institution weighted by the volume of loans outstanding at each rate.

(v) "Generally accepted accounting principle" has the same meaning as that term as defined in § 621.2(a) of this chapter.

(vi) "Loanable funds" means interest-accruing assets ("loans" as defined in § 621.2(a)(13) of this chapter minus "nonaccrual loans" as defined in § 621.2(a)(15) of this chapter, plus eligible investment securities as defined in § 615.5140 of this chapter, plus other interest-accruing assets) minus interest-bearing obligations (Consolidated Bonds, Consolidated Systemwide Bonds, Farm Credit Investment Bonds, Consolidated Systemwide Notes, funds held accounts, notes payable, and other interest-bearing liabilities).

(vii) "Total assets" means the total assets of an institution as determined in accordance with the Farm Credit Administration instructions for the preparation of financial and statistical reports (FCA F&R). For banks for cooperatives, total assets shall be increased by participation loans sold by a bank for cooperatives to the Central Bank for Cooperatives and reduced by its investment in the Central Bank for Cooperatives.

(viii) "Unallocated retained earnings" means the undistributed earnings of an institution that have not been allocated to the institution's members or patrons. The unallocated retained earnings for each type of institution are contained in the following accounts:

(A) For Federal land banks:
(*1*) Legal reserve, reduced by impairment (Accounts 456 and 459);
(*2*) Surplus reserve (Account 462); and
(*3*) Earned surplus (Account 471).
(B) For Federal land bank associations:
(*1*) Legal reserve, reduced by impairment (Accounts 456 and 459);
(*2*) Surplus reserve (Account 462); and
(*3*) Earned surplus (Account 471).
(C) For Federal intermediate credit banks:
(*1*) Surplus—unallocated (Account 465–05);
(*2*) Surplus—reserved, reduced by impairment (Accounts 465–10 and 468);
(*3*) Undistributed earnings (Account 478); and
(*4*) Reserve for contingencies—unallocated (Account 481).
(D) For production credit associations:
(*1*) Surplus reserved (Account 465–10);
(*2*) Undistributed earnings (Account 478);
(*3*) Earnings reserved for stock dividends (Account 482); and
(*4*) Earnings reserved for patronage distributions (Account 484).
(E) For banks for cooperatives:
(*1*) Unallocated surplus (Account 465–05);
(*2*) Surplus reserved (Account 465–10); and
(*3*) Undistributed earnings (Account 478).

(ix) "Unallocated retained earnings percentage" means the relationship between the unallocated retained earnings of an institution and its total assets reflected as a percentage. The percentage is calculated by dividing unallocated retained earnings by total assets.

(2) Notice of assessment and issuance of obligations. The Corporation shall provide a written notification of any assessment or requirement to purchase the Corporation's obligations to the chief executive officer of each institution providing funds. The notification shall include the amount and purpose of the transaction, accounting and funds transfer instructions, and any other information the Corporation determines is necessary to complete the transaction(s). All System institutions shall pay assessments or purchase obligations within 10 days of the date of the notification and in the manner prescribed by the Corporation.

(3) Assessment for operating expenses. The Corporation shall assess System institutions in accordance with this paragraph to cover the Corporation's operating expenses, except interest expense, at such times and under such circumstances the Corporation determines are appropriate. For purposes of this paragraph, operating expenses shall mean all expenses incurred in the routine operation of the institution, including salaries, benefits, cost of space occupied, and all other business expenses included in an operating budget approved by the Corporation board of directors. Operating expenses shall not include payments of direct financial assistance made to eligible System institutions by the Corporation.

(4) Purchase of Corporation obligations. The Corporation shall require System institutions in accordance with this paragraph to purchase the Corporation's obligations which are issued to obtain funds to provide direct financial assistance to eligible System institutions, to acquire eligible loans and loan-related assets, or to pay interest expense on debt obligations assumed by the Corporation in purchasing eligible loans and loan-related assets from System institutions. The Corporation shall utilize transactions which minimize the impact on the institutions providing funds, taking into consideration relevant economic, financial, and tax implications.

(5) Adjustment of capital zones and unallocated retained earnings percentage. Assessments and requirements to purchase the Corporation's obligations are based in part on the zone classification of an institution as provided for in Appendix I to this regulation subject to the adjustments made in accordance with this paragraph. The FCA may adjust the zone classification or unallocated retained earnings of an institution for purposes of this paragraph based on the following criteria:

(i) The amount of the allowance for loan losses or other valuation of an institution exceeds the amount that is required in accordance with generally accepted accounting principles. The excess amount in the allowance shall be considered unallocated retained earnings for purposes of determining assessments and requirements to purchase the Corporation's obligations.

(ii) An institution has diverted unallocated retained earnings without substantial economic benefit to the institution.

(iii) An institution has material unrecognized gains that would, if realized, impact the computation of the unallocated retained earnings of the institution. Such instances include but are not limited to unrecognized gains on appreciated assets, and the fair market value of unrecorded assets such as mineral rights.

(iv) An institution has entered into transactions that elevate form over substance.

(6) Funding criteria. To the extent necessary to fund its purchase of assets from System institutions and to enable the Corporation to extend direct financial assistance to eligible institutions, the Corporation shall assess or require System institutions to purchase obligations to the full extent of their available capital and reserves, as defined in this subpart. In equitably distributing the burden of such assessments as they are made from time to time, the Corporation shall require institutions which in accordance with paragraph (h)(5) of this section are classified in Zone A, B, or C to provide funds to the Corporation, prior to making assessments of or requiring the purchase of obligations by institutions classified in Zone D. The Corporation shall take into consideration the criteria contained in paragraphs (h)(6)(i) through (iii) of this section, provided that nothing in this paragraph shall prevent the Corporation from assessing or requiring an institution to purchase obligations when it has available capital and reserves.

(i) The Corporation shall consider the effect that obtaining funds will have on the institution's loan rate. Any assessments and purchases of obligations shall be deemed to have no effect on the lending rates of the following institutions that either have sufficient resources to pay assessments and purchase obligations without raising their interest rates or that charge rates below the average loan rates of similar institutions:

(A) Institutions classified in Zone A or B; and

(B) Institutions classified in Zone C that charge an average loan rate, based on the most recent quarterly financial statement, that is below the weighted average loan rate charged by all institutions chartered under the same title of the Act and classified in Zone C.

(ii) The Corporation shall ensure that the earnings capacity, loanable funds, and overall financial viability of an institution providing funds to the Corporation are not reduced by such action below the level necessary to enable the institution to provide credit to eligible borrowers on reasonable and competitive terms. Any assessment or required purchase of obligations shall be deemed to have no impact on an institution for purposes of this paragraph if such institution has a positive level of adjusted loanable funds.

(iii) The Corporation shall ensure that System banks that provide funds to the Corporation retain their ability to obtain funds in public financial markets and to satisfy their individual liability on obligations. Any assessment or required purchase of obligations shall be deemed to have no impact on an institution for purposes for this paragraph if the institution is able to satisfy the collateral requirements contained in section 4.3 of the Act.

(7) The Corporation may redistribute outstanding obligations held by contributing institutions on an annual basis, based on procedures developed by the Corporation, to ensure that no System institution is required to hold a greater than proportionate share of the Corporation's obligations based on its level of capital and unallocated retained earnings.

* * * * *

(l) * * *

(9) "FCA" means the Farm Credit Administration.

(m) Confidentiality of information. Any information prepared by, or adopted by, the FCA as official agency documents, or obtained by the FCA in the exercise of its statutory authorities, including without limitation, FCA examination reports, reports on the financial condition of any System institution, or any zone classification of any System institution that the Corporation receives from the FCA or by the expressed consent of the FCA from any System institution or any other party shall be held strictly confidential and shall not be disclosed to any person without the written consent of the FCA.

Appendix I to § 611.1142(h)—Funding

Section 611.1142(h) contains references to regulatory zones and unallocated retained earnings percentages that will be set forth in § 615.5206. Until § 615.5206 is published as a final regulation, references to zone classifications or unallocated retained earnings percentages shall refer to such matters contained in this Appendix I.

REGULATORY ZONES AND UNALLOCATED RETAINED EARNINGS PERCENTAGE

[Percentages represent the bottom of the indicated zone]

Institution	Regulatory zone			
	A	B	C	D
1. Federal Land Bank	6.6	5.4	1.5	0
2. Federal Land Bank Associations	6.6	5.4	1.5	0
3. Federal Intermediate Credit Bank	1.0	0.7	0.4	0
4. Production Credit Associations	16.1	9.2	2.3	0
5. Districtwide Production Credit Association	11.0	7.9	4.8	0
6. Bank for Cooperatives	2.2	1.5	0.8	0
7. Central Bank for Cooperatives	1.5	1.0	0.5	0

The numbers in each box represent the lower boundary of the zone. For instance, a bank for cooperatives would be classified in Zone D if its unallocated retained earnings percentage drops below 0.8 percent. Conversely, if its unallocated retained earnings percentage were 2.2 percent or greater, it would be classified in Zone A.

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12 CFR Parts 620 and 621

Disclosure to Shareholders Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration Board (Board) adopts amendments to regulations under Part 620 that (1) require disclosure by each Farm Credit System (System) bank and association in its annual report to shareholders of the aggregate amount of compensation paid during the last fiscal year to the institutions' senior officers as a group, without naming them; (2) require each production credit association (PCA) to send the financial statements of the Federal intermediate credit bank (FICB) in its district to PCA shareholders; and (3) require each System bank and PCA, beginning with the quarter ending June 30, 1986, to report quarterly to shareholders on the financial condition of the institution.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

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or

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SUPPLEMENTARY INFORMATION: On April 7, 1986, (51 FR 11745) the Farm Credit Administration (FCA), by its Acting Chairman, published for comment proposed amendments to recently adopted regulations that require System banks and associations to disseminate annual reports to shareholders at the end of each fiscal year and information statements to association shareholders prior to any shareholder meeting at which directors are elected (51 FR 8644, March 13, 1986). The proposed amendments would require (1) System banks and associations to disclose aggregate compensation of senior officers in the annual report to shareholders; (2) FICB financial statements to be distributed to PCA shareholders; and (3) System banks and PCAs to report quarterly to shareholders.

The Farm Credit Corporation of America (FCCA) commented on behalf of the 37 System banks. Comments were also received from a number of association officers and directors and the Tenth District FLBA shareholders Advisory Committee. All but two of the association officers and directors that commented are in the Baltimore District. Their comments related primarily to the disclosure of senior officer compensation and the cost of the disclosure. The Tenth District Shareholders Advisory Committee did not comment directly on the provisions of the regulation, but set forth its interpretation of the Farm Credit Amendments Act of 1985 (1985 Amendments), as it affects the FCA's authority to approve interest rates. The FCCA comments represented the coordinated comments of the 37 System banks on the three areas addressed by the proposed amendments. The comments and the Board's response are discussed below.

1. General

The FCCA indicated that System institutions recognize the need for full disclosure of material information and acknowledge the regulatory responsibility of FCA. However, they commented that consideration should be given to the unique nature of System institutions and the shareholders' investment in these institutions. The FCCA stated that because the stock of System institutions is not publicly traded and is not held for capital appreciation, investment in System institutions is generally motivated by the availability and the cost of credit rather than the usual investment considerations. Therefore, the FCA should carefully consider whether the disclosure requirements of the Securities and Exchange Commission (SEC) for publicly traded companies are appropriate for System institutions. However, the FCCA did not identify any particular disclosures that are inappropriate. Also, it asserted that the disclosure requirement must take into account a careful balancing of the benefits of additional disclosure against

the associated costs, which must be ultimately borne by all of the System's borrower/shareholders.

The Board does not believe that the distinction between holding stock for investment purposes and holding stock as a requirement for doing business with an institution has any material bearing on the need of shareholders for information on which to make informed decisions. There are distinctions between the types of information material to the shareholders of SEC reporting issues and shareholders of System institutions, and every effort has been made to adjust the disclosure requirements of the regulation accordingly.

While the stock of System institutions is not publicly traded in a secondary market, that stock is held by over 900,000 individuals and business entities who have a common interest in financial and operating information concerning those institutions. Also, the size of many System institutions in terms of assets is comparable to, and sometimes greater than, financial institutions and other commercial entities whose equity and debt securities are widely held by the public. Regardless of their motivation for purchasing the stock, borrowers make a substantial financial investment in System institutions and obtain a right to participate in the affairs of those institutions. Shareholders can potentially benefit from their investment in System institutions in terms of retained earnings, dividends and patronage refunds. Thus, shareholders need sufficient information to make intelligent decisions about the management and operation of the institution relating to their investments and to hold directors and management accountable for their actions. Furthermore, full disclosure should lead in the long run to more efficient operations, as it should make directors and management more conscious of their responsibilities and more aware that they are accountable to shareholders for their actions.

The Board agrees that the benefits to be derived from regulatory requirements should outweigh the cost of compliance. The Board recognizes that System institutions will incur costs in preparing and disseminating disclosure materials, but believes that the benefits that will accrue in the long run to shareholders in the more efficient operation of the institutions will outweigh the costs.

2. Quarterly Reporting to Shareholders

The FCCA commented that the cost of distribution of quarterly financial statements to borrow/shareholders is not justified by the incremental benefit to be derived from quarterly reporting over the annual report requirement. The FCCA conceded that disclosure of interim information may be appropriate in certain circumstances—for example, where there has been a materially adverse change in the financial condition of an institution—and agreed that quarterly reporting to the FCA should be required. However, the FCCA asserted that System institutions should not be required to distribute quarterly reports to shareholders but should be permittted to make the quarterly report filed with the FCA available upon request or voluntarily distribute a quarterly report in a format deemed appropriate by the institution. The FCCA noted that this suggestion would be consistent with SEC disclosure requirements. The FCCA further commented that the System and FCA should have an opportunity to evaluate the implementation of the new annual reporting disclosure requirement before deciding whether additional quarterly reporting requirements should be instituted.

The Board recognizes that the requirement to distribute quarterly reports to shareholders goes beyond SEC requirements. However, most publicly traded companies routinely distribute the quarterly reports filed with the SEC to their shareholders. Furthermore, their quarterly statements are extensively reported and analyzed in the national press.

The Farm Credit Act of 1971, as amended, (Act) places a regulatory obligation upon the FCA to encourage borrower/shareholder participation in System institutions. In the 1985 Amendments, Congress affirmed the FCA's regulatory obligations with respect to System financial reporting by expressly authorizing the FCA to regulate disclosure to shareholders. The Board believes that requiring quarterly reporting is an appropriate means to that end and has concluded that there is a strong need for quarterly reporting not only to FCA, but also to borrower/shareholders.

The Board believes the costs of printing and mailing, when separated from the cost of report preparation (which would be incurred in any event if the reports were merely filed with the FCA) are not excessive and are justified by the benefit that accrues to shareholders. Nonetheless, in order to assure that affirmative disclosure can be achieved at minimum cost, the final regulation allows an institution, as an alternative to mailing, to publish its quarterly report in newspapers and periodicals of wide enough circulation in its trade area to be reasonably assured that all of the institution's shareholders will be reached. Such publication must occur within 45 days of the end of the quarter.

The FCCA commented that System institutions are neither accustomed to nor equipped to assume the accounting and disclosure responsibilities of publicly traded corporations and need additional lead time to permit System institutions to gear up to comply with the new requirements. The FCCA asserts that if quarterly reports are required as of June 30, 1986, the diversion of time and resources to satisfy the quarterly requirements could mean that all shareholder reports produced during the next year will be of a lower quality than desired by the FCA and the System. The FCCA proposes that the quarterly reporting requirement not be effective until 1987.

It should be noted that the proposed amendments to require quarterly reporting and establishing the framework for it were published for public comment as early as April 7, 1986. Also, the System's Accounting Standards Committee had established a suggested framework for interim reporting which was distributed to System banks in March of 1986. The proposed amendments stated that, if the amendments were adopted, quarterly reports would be required for the quarter ending June 30, 1986. The regulation allows 45 days after the end of the quarter for the preparation and dissemination of the report, which would place the due date for second quarter 1986 reports at not later than August 14. Therefore, the Board believes that System institutions have had adequate notice of, and opportunity to anticipate, the requirements and expects all System banks and PCAs to comply fully with the reporting requirements beginning with the second quarter ending June 30, 1986. The Board does not agree that the preparation of quarterly reports should result in a lower quality annual report to shareholders. Rather, the Board believes that the preparation of quarterly reports in 1986 should enhance the quality and timeliness of information presented in the annual report to shareholders, which is required for the 1986 fiscal yearend.

The FCCA commented that insufficient time is provided after the close of the quarter for the preparation and distribution to shareholders and recommended that the period of time within which the report must be distributed to shareholders be lengthened from 45 to 60 days. The Board believes that 45 days is ample time to provide for the compilation and

distribution of quarterly reports to shareholders. The extent of the information to be provided is generally related to material changes in the financial condition of the institution since the end of the fiscal year and an analysis of the results of operations for the quarter. An extension of the reporting period beyond that proposed would dilute the timeliness and hence the importance of the information to the shareholder. Therefore, the final regulation retains the 45-day requirement for distribution to shareholders.

The FCCA commented that the reporting of business combinations required by § 620.11(b) (5) and (6), while consistent with SEC quarterly reporting requirements, is not necessarily appropriate for System institutions. The FCCA suggested that the FCA provide more specific guidance for transactions that have occurred and that can be expected to occur. The FCCA identified consolidations and mergers as two obvious such transactions that would be covered by this section.

The Board believes that it is not possible to address all transactions that have occurred or can be expected to occur that could be covered by this or any section of the regulations and declines to implement the suggestion.

A number of minor substantive and technical changes have been made in response to comments:

Section 620.11(a) contained an incorrect reference to 12 CFR 620.21. An appropriate change has been made to the final rule to clarify that the format is governed by paragraphs (b), (c), and (d) of § 620.11.

The final regulation clarifies that the "major balance sheet captions" and "major income statement captions" to be provided are those captions appearing in the institution's annual report to shareholders.

The FCCA suggested that de minimus rules should be established for § 620.11(b) (2) and (3) to prevent immaterial items from being required to be disclosed. While the Board believes that the rules of condensation have the same effect as de minimus rules, a de minimus provision has been added to the final rule as § 620.11(f).

As proposed, § 620.11(b)(4) would have required disclosure of material contingencies even if a significant change has not occurred since year-end. This requirement is consistent with the SEC requirements and is an exception to the assumption permitted for all other disclosures that the readers of interim statements have access to year-end financial statements. The FCCA questioned the need for such duplication of information and opined that it would place inappropriate emphasis on one aspect of the financial statement. The Board has concluded that the FCCA comment has merit, and has deleted the requirement in the final rule.

The FCCA commented that § 620.11(c) appears to require Management's Discussion and Analysis of all items enumerated to be included in § 630.3(g) be addressed in the quarterly report, as well as any material changes occurring during the interim period. The FCCA read the requirement to require a duplication of the discussion in the annual report, which it views as extremely burdensome. The FCCA suggested that the quarterly report focus on material developments occurring during the interim period.

The proposed regulation was not intended to require a complete reiteration of the information contained in the annual report. Rather, the intention was to require management to include a discussion and analysis of the financial condition and results of operations that have occurred during the year-to-date and quarterly periods presented in the financial statements so as to enable the reader to assess material changes that have occurred during the specified periods. The items enumerated in § 620.3(g) were intended to be used as a guide to assist in the preparation of the interim discussions. This section has been modified in the final regulation to clarify this intention.

A new paragraph (d) has been added to § 620.10 to clarify that quarterly reports, like other reports distributed to shareholders, should be prepared in accordance with Part 621.

An internal inconsistency in the regulation has been corrected by deleting a clause in the second sentence of § 620.11(c)(2) in the proposed amendment that implied that the inclusion of an income statement for the most recent fiscal quarter is optional. The deleted clause read: "If the institution is required to, or has elected to provide an income statement for the most recent fiscal quarter, . . ."

This clause was inconsistent with § 620.11(d)(2), which requires an income statement for the most recent fiscal quarter.

3. Requiring Distribution of FICB Financial Statements to PCA Shareholders

The recently adopted § 620.2(b) requires that copies of the Federal land bank (FLB) financial statements be distributed to Federal land bank association (FLBA) shareholders in addition to the FLBA statements. The proposed amendment would have required that copies of the FICB financial statements, be distributed to PCA shareholders in addition to the PCA statements. The FCCA commented that such reports should be made available to association shareholders on request, but should not be required to accompany the PCA's annual report. The FCCA took issue with part of the FCA's stated rationale for the provision, noting that borrower interest rates are currently largely determined by the System's cost of funds and FCA's approval of interest rates. For this reason, the FCCA contended that there is little benefit to borrowers/shareholders receiving copies of the FICB financial statements insofar as interest rates are concerned. The FCCA conceded that FICB financial statements may assist PCA borrowers in evaluating the PCA's investment in the FICB, but asserted that the same could be said for providing financial statements of the other banks in the district as well as Systemwide financial statements. The FCCA further concluded that in the current environment intrabank and interdistrict actions may be more relevant to evaluating a PCA's investment, and that to furnish FICB financials without furnishing additional information could be misleading to shareholders. The FCCA recommended that the regulations require that financial statements of district banks as well as Systemwide financial statements be made available to all shareholders on request.

The final regulation retains the requirement to send FICB financial statements to PCA borrowers because of the significant impact the FICB has on the operations of a PCA. The Board recognizes that the cost of funds is a significant factor in determining borrower interest rates. However, a number of other material factors reflected in the bank's financial statements also affect the rate a FICB charges PCAs. The FICB's operating expenses, the risk inherent in the FICB's loan portfolio, financial assistance to other PCAs, and financial assistance to other System institutions will also affect those rates. While the market sets the general funding rate, each bank's management of its debt portfolio through maturity and interest rate selection materially influence borrower interest rates. The fact that the FCA currently approves interest rates does not diminish the importance of the performance of management as reflected in financial information contained in FICB financial statements. Furthermore, the FCA is currently approving interest

rates (as opposed to interest rate plans) because of the significant financial stress System institutions are experiencing and because of the need to preserve System resources. The duration of this temporary measure depends on a number of factors unrelated to the disclosure issue.

The Board does not agree that requiring Systemwide financial statements to be made available to shareholders upon request would "assure access to 'potentially material and relevant information' for interested shareholders but would avoid the significant cost of requiring disclosure of incomplete and potentially misleading information." Specifically, the Board disagrees with the implication that the requirements of the proposed rule would result in potentially misleading information being disclosed to borrowers. Any intra-district or intra-System transactions that have a material impact on the financial condition of the institution would be required, pursuant to 12 CFR 620.2(c), to be disclosed in the association's annual report. If association annual reports and bank financial statements are prepared in compliance with the regulations, shareholders should have access to sufficient information not only about the association and the bank, but material contingencies related to other System institutions. While the Board believes it is a good policy to make the Systemwide financial statements available to borrowers upon request, the final rule does not require it. The Board believes that the factors that have the most immediate impact on a PCA borrower's cost of funds are more directly determined by the operations of the PCA and the FICB. Moreover, the final regulation establishes a minimum standard for disclosure and the Board assumes that System management and directors will, consistent with their legal obligations, make such additional disclosure of information beyond that called for by the regulation as they believe to be necessary for full, accurate and fair disclosure to shareholders.

The FCCA commented that the FCA Supplementary Information Statement was inaccurate in that it implied that most districts have intra-district loss-sharing agreements between PCAs and FICBs. While most districts do not have formal intra-district loss-sharing agreements between the PCAs and FICB, many district FICBs and PCAs have entered into agreements whereby the FICB agrees to share in certain specified losses of a PCA under certain circumstances. Furthermore, the FICB Capital Preservation Agreement requires that an FICB and the district PCAs develop, implement, and maintain PCA loss-sharing agreements. Before an FICB is entitled to assistance under the FICB Capital Preservation Agreement for the purpose of absorbing PCA loan losses, the district PCA must have given assistance to the PCAs experiencing losses equal to the assistance which would have been available under the Model Loss Sharing Agreement for PCAs.

In a related matter, the System requested clarification from the FCA concerning whether the financial statements to be distributed by the FICBs should be combined with those of the district PCAs. Specifically, the FCCA requested that the regulation sanction the use of combined FICB/PCA financial statements as their primary statements, since most FICBs are using combined statements as their primary statements.

The Board fully supports the concept of combined FICB/PCA, FLB/FLBA financial statements as the primary statements to be prepared by a district FLB or FICB. The Board believes that excluding the associations from the bank statements results in the publication of financial statements that do not show the true financial condition of the district banks. Furthermore, System institutions are required by statute to comply with generally accepted accounting principles, and in these circumstances combined reporting is the preferred method of presentation under generally accepted accounting principles. However, the Board believes that separate presentation of bank financial statements in the body of the report is also needed to allow the association to evaluate the bank's financial condition and results of operations. In addition, the Board believes disclosure of any accounting policy or practice that differed from those used in the combined statements is needed in order for a reader to evaluate properly the bank's financial statements. The Board notes that the rationale for combined financials also supports the argument that association borrower/shareholders need the financial statements of both the bank and association in order to properly evaluate the operations and financial position of the association.

In order to clarify the issue with respect to FLB/FLBA and FICB/PCA combined financials, FCA has made appropriate changes to Part 620. A new paragraph (k) has been added to 12 CFR 620.3 that requires FLBs to present financial statements of the FLB and the district FLBAs on a combined basis and requires FICBs to present the financial statements of the FICBs and their district PCAs on a combined basis. A separate bank statement of condition and statement of income is also required.

Another comment by the FCCA concerned the distribution of FICB financial statements to PCA shareholders whose PCA owns a majority interest in the district FICB. In those cases, FICB data is generally consolidated in the PCA's own financial statements and the FCCA concluded that the requirement to send FICB statements with PCA annual reports would add nothing to shareholder disclosure in such circumstances.

The Board agrees that where a single PCA owns the district bank and issues consolidated statements, an additional requirement to provide the district bank financial statements is duplicative. However, where more than one PCA owns the bank, a consolidated PCA/FICB statement prepared by a PCA that owns a majority interest in the bank would not fully disclose the financial impact of the bank's operations because of the eliminations made for the minority interest. Furthermore, in districts where there are a few owners of the bank, the associations that did not elect to become part of the districtwide association are generally financially strong, and to not provide shareholders with information with respect to these associations could be a material oversight. For this reason, where the district bank is owned by more than one association, disclosure of bank-prepared combined financials shall also be distributed to association shareholders.

4. Disclosure of Senior Officer Compensation

The proposed amendment would have required that the aggregate compensation of senior officers (and at a minimum the top five most highly paid officers, whether or not designated as senior officers) be disclosed without naming the individuals included. It would also have required the inclusion of a statement that disclosure of the salaries of individual senior officers or any officer included in the aggregate would be available to shareholders upon request.

The FCCA indicated that the System strongly opposes this disclosure requirement. The FCCA commented that disclosure of aggregate compensation of senior officers is sufficient to enable shareholders to evaluate the stewardship of directors and objected to the required statement that disclosure of the compensation of individual officers is available upon request. The FCCA

also asserted that the requirement to disclose the compensation of the five most highly paid officers, whether or not designated as senior officers would reach low level officers whose compensation is not meaningful to an evaluation of director stewardship. The FCCA suggested that the regulations only apply to officers receiving more than $50,000 in annual compensation. It commented that this would be comparable to SEC rules, which exclude all persons whose compensation is less than $60,000. It also noted that the relevance of the information to the shareholders evaluation of the stewardship of directors is diluted by the extensive role of the FCA in determining the compensation of bank officers and the role of the banks in determining association compensation. However, the FCCA asserted that such disclosure would be appropriate when FCA gets out of the business of setting bank CEO salaries and approving salary scales for other bank employees.

Most of the comments from association officers and directors opposed this disclosure requirement. Some believed that no disclosure should be made, even in the aggregate. Almost all believed that individual officers' salaries should not be disclosed. The rationales for the comments varied. Some apparently believed that shareholders have no right to any information about management compensation, viewing the requirement as an unwarranted invasion of an officer's privacy. One commentator asserted that farmers would compare the officer's income to their own, which is not comparable because of different tax treatment, and would wrongly conclude that officers are too highly paid. Others believed the information would not be used for the purpose for which it was intended, but would be the subject of idle curiosity. One association officer supported the disclosure of officers' compensation, believing it would operate as an incentive to increase officers' salaries to avoid embarrassment on part of the institution.

The Board continues to believe the information concerning that compensation of senior officers is material and should be disclosed and made available to borrower/shareholders. Shareholders are entitled to information concerning the amount of compensation being paid to officers and directors, and such standard disclosure has long been the practice for entities with significant public ownership. The FCA does not determine the compensation paid to bank CEOs, nor does it determine salary scales of other bank employees. The FCA does, in accordance with section 5.17(a)(15) of the Act, approve, except for associations, the salary scale for employees of the institutions of the System, and approve the compensation of the chief executive officer.

The SEC requires disclosure of the aggregate total compensation of all executive officers as a group and of the names and compensation of each of the five most highly paid executive officers whose compensation exceeds $60,000. The proposed amendment would have required only the aggregate figure to be disclosed along with a statement that disclosure of individual senior officers is available upon request, without regard to any dollar threshold. Also, to prevent circumvention of the disclosure requirement by failure of the board to designate an officer as a senior officer, the proposed amendment would have required that the aggregate disclosure include at a minimum the top five most highly paid officers whether or not designated by the board as senior officers. Disclosure of the name and total compensation of these individuals would also be available upon request without regard to any dollar threshold.

The final rule retains the requirement to disclose the aggregate compensation of senior officers and at a minimum the aggregate compensation of the five most highly paid officers (whether or not designated as senior officers) without regard to any dollar threshold. The suggested $50,000 threshold is not employed for individual senior officer disclosure that is available upon request because the Board believes that shareholders of smaller institutions are entitled to know the total compensation of senior officers even if individual compensation does not exceed $50,000. However, recognizing that in smaller organizations the disclosure of compensation of persons not designated as senior officers could reach beneath senior management levels, in the final rule the availability upon request of disclosure of compensation of persons not designated as senior officers whose compensation is included in the aggregate is limited to those whose total compensation exceeds $50,000.

Minor technical and clarifying amendments are made to other sections of Part 620. Specifically:

Section 620.3(f)(1)(i) is amended by adding the words, "less allocated equities" after the word "Surplus" under the caption "Total capital."

Section 620.3(f)(1)(iii) is amended by deleting the word "average" in the phrase "Allowance for loan losses-to-average loans" under the caption "Key financial ratios."

Section 620.3(g)(1)(iii)(B) is amended by deleting the word "average" between the words "to" and "loans."

Section 620.3(g)(2)(i) is amended by adding the word "interest" between the words "net" and "income."

Section 620.20(c) is amended to reference Subpart B.

Section 621.2(a)(15)(iii) is amended by adding the word "not" after the word "secured" in the phrase "secured, in process" and after the word "and" in the phrase "collection, and fully collectible."

List of Subjects in 12 CFR Part 620

Banks, banking, Disclosure to shareholders, Annual reports.

For the reasons set forth in the preamble, Chapter VI, Title 12, of the Code of Federal Regulations is amended as follows:

1. The authority citations for Parts 620 and 621 are revised to read as follows:

Authority: Sec. 5.17 (9) and (10), Pub. L. 92-181, as amended by Pub. L. 99-205, 12 U.S.C. 2252(a) (9), (10).

PART 620—DISCLOSURE TO SHAREHOLDERS

2. Section 620.2 is amended by revising paragraph (b) and adding a new paragraph (k) to read as follows:

Subpart A—Annual Reports to Shareholders

§620.2 Preparing, distributing, and filing the report.

* * * * *

(b) For the purposes of § 620.3(m), a Federal land bank association shall include the financial statements of the Federal land bank in the district in addition to its own and a production credit association shall include the financial statements of the Federal intermediate credit bank in the district in addition to its own. Production credit associations and Federal land bank associations shall comply with all other sections of this part except as expressly stated otherwise herein. This requirement shall not apply where the FICB is owned by a single PCA.

* * * * *

(k) For purposes of this part, each annual and quarterly reports of a Federal land bank shall present the financial statements of the Federal land bank and its district Federal land bank associations on a combined basis. The annual and quarterly reports of a Federal intermediate credit bank shall present the financial statements of the Federal intermediate credit bank and its

district production credit associations on a combined basis. The respective reports shall include, at a minimum, the statement of condition and statement of income for the bank only. These statements may be in summary form and shall disclose the basis of presentation if different than the accounting policies of the combined bank and associations statements.

3. Section 620.3 is amended by revising paragraphs (f)(1) (i) and (iii), (g)(1)(iii)(B), (g)(2)(i), and (i) to read as follows:

§ 620.3 Contents of the annual report to shareholders.

* * * * *

(f) * * *

(1) * * *

(i) Balance sheet

Total assets
Investments
Loans
Allowance for losses
Net loans
Acquired property
Total liabilities
Obligations with maturities longer than 1 year
Obligations with maturities less than 1 year
Total capital
Stock and participation certificates
Surplus, less allocated equities
Allocated equities

* * * * *

(iii) Key financial ratios

Return on average assets
Return on average capital
Net interest margin as a percentage of average earning assets
Capital-to-asset
Debt-to-capital
Net chargeoffs-to-average loans
Allowance for loan losses-to-loans

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(B) An analysis of the allowance for loan losses that includes the ratios of the allowance to loans and net chargeoffs to average loans, and a discussion of the adequacy of the allowance for losses to absorb the risk inherent in the institution's loan portfolio;

* * * * *

(2) * * *

(i) Describe, on a comparative basis, changes in the major components of net interest income during the last 2 fiscal years, describing significant factors that contributed to the changes and quantifying the amount of change(s) due to an increase in volume or the introduction of new services and the amount due to changes in interest rates earned and paid, based on averages for each period.

* * * * *

(i) Compensation of directors and senior officers.

(1) *Director compensation.* Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and any noncash compensation that exceeds 10 percent of total compensation or $25,000, whichever is less) and state the total cash compensation paid to directors as a group during the last fiscal year. For each director, state:

(i) The number of days served at board meetings;

(ii) The total number of days served in other official activities; and

(iii) The total compensation paid to each director during the last fiscal year.

(2) *Senior officer compensation.* Disclose the aggregate amount of compensation paid during the last fiscal year to all senior officers as a group, stating the number of persons in the group without naming them. At a minimum, disclose the aggregate amount of compensation paid to the five most highly paid officers whether or not designated as a senior officer by the board. For the purposes of this paragraph, compensation shall include annual salary, cash bonuses, deferred compensation, vested pension benefits (unless the plan is made available to all employees on the same basis), and any other noncash compensation that exceeds 10 percent of the total cash compensation or $25,000, whichever is less. The report shall include a statement that disclosure of the total compensation paid during the last fiscal year to any senior officer, or to any other individual included in the aggregate whose compensation exceeds $50,000, is available to shareholders upon request.

* * * * *

4. Subpart B, Quarterly Reports to Shareholders, is added with the table of contents, to read as follows:

Subpart B—Quarterly Reports to Shareholders

Sec.
620.10 Preparing, distributing, and filing the report.
620.11 Content of quarterly report to shareholders.

Subpart B—Quarterly Report to Shareholders

§ 620.10 Preparing, distributing, and filing the report.

(a) Each institution of the Farm Credit System except Federal land bank associations shall prepare a quarterly report for each fiscal quarter beginning with the quarter ending June 30, 1986, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution. The reporting requirements shall conform to the requirements set forth in § 620.11.

(b) The quarterly report shall be filed with the Farm Credit Administration and distributed to shareholders no later than 45 days after the end of the quarterly period to which it relates. Distribution may be by mail or by publication in newspaper or periodicals in the trade area of wide enough circulation to be reasonably assured that all of the institution's shareholders are reached on a timely basis.

(c) Copies of the Federal land bank quarterly reports shall be distributed to the shareholders of the Federal land bank associations in the district, and copies of the Federal intermediate credit bank quarterly reports shall be distributed to the shareholders of the production credit associations in the district.

(d) The quarterly financial statements shall be prepared in accordance with the rules set forth in Part 621.

§ 620.11 Content of quarterly report to shareholders.

(a) The information required to be included in the quarterly report may be presented in any format deemed suitable by the institution, except as provided in paragraphs (b), (c) and (d) of this section. The report must be easily readable and not presented in a manner that is misleading but may be condensed into major captions in accordance with the rules prescribed in paragraph (b) of this section. For purposes of this section, major captions to be provided are the same as those required to be provided in the financial statements contained in the institution's annual report to shareholders.

(b) *Rules for condensaton.*—(1) *Interim balance sheets.* When any major balance sheet caption is less than 10 percent of total assets and the amount in the caption has not increased or decreased by more than 25 percent since the end of the preceding fiscal year, the caption may be combined with others.

(2) *Interim statements of income.* When any major income statement caption is less than 15 percent of average net income for the 3 most recent fiscal years and the amount in the caption has not increased or decreased by more that 20 percent since the corresponding interim period of the preceding fiscal year, the caption may

be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the 3 most recent fiscal years, the average loss shall be used for purposes of this test.

(3) The interim statement of changes in financial position may be abbreviated, starting with a single figure for funds provided by operations and showing other changes individually only when they exceed 10 percent of the average of funds provided by operations for the 3 most recent fiscal years.

(4) The interim financial information shall include disclosure either on the face of the financial statements or in accompanying footnotes sufficient to make the interim information presented not misleading. Institutions may presume that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year that the adequacy of additional disclosure needed for a fair presentation may be determined in that context. Accordingly, footnote disclosure that would substantially duplicate the disclosure contained in the most recent audited financial statements (such as a statement of significant accounting policies and practices), and details of accounts have not changed significantly in amount or composition since the end of the most recent completed fiscal year may be omitted. However, disclosure shall be provided of events occurring subsequent to the end of the most recent fiscal year that have a material impact on the institution. Disclosures should encompass, for example, significant changes since the end of the most recently completed fiscal year in such items as accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization, including significant new indebtedness or modification of existing financing agreements; and the reporting entity resulting from business combinations or dispositions.

(5) If, during the most recent interim period presented, the institution entered into a business combination treated for accounting purposes as a pooling of interests, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate comments or comparisons between the separate and consolidated results

(6) If a material business combination accounted for as a purchase has occurred during the current fiscal year, pro forma disclosure shall be made of the results of operations for the current year up to the date of the most recent interim balance sheet provided (and for the corresponding period in the preceding year) as though the companies had combined at the beginning of that period. This pro forma information shall, at a minimum, show:

(i) Total operating income.

(ii) Income before securities gains (losses), extraordinary items, and the cumulative effect of accounting changes.

(iii) Net income.

(7) In addition to meeting the reporting requirements specified by existing accounting pronouncements for accounting changes, the institution shall state the date of any material accounting change and the reasons for making it. In addition, a letter from the persons who verify the institution's financial statements shall be filed as an exhibit, indicating whether or not the change is to an alternative principle which in their judgment is preferable under the circumstances, except that no such letter need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

(8) Any material retroactive prior period adjustment made during any period covered by the interim financial statements shall be disclosed, together with its effect upon net income and upon the balance of undivided profits for any prior period included. If results of operations for any period presented have been adjusted retroactively by such an item subsequent to the initial reporting of such period, similar disclosure of the effect of the change shall be made.

(9) The interim financial statements furnished shall reflect all adjustments that are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Furnish any material information necessary to make the information called for not misleading, such as a statement that the results for interim periods are not necessarily indicative of results to be expected for the year.

(c) Management's discussion and analysis of financial condition and results of operations. Discuss material changes, if any, to the information provided to shareholders pursuant to § 620.3(g) that have occurred during the periods specified in paragraphs (d)(1) and (2) of this section. Such additional information as is needed to enable the reader to assess material changes in financial condition and results of operations between the periods secified in paragraphs (d)(1) and (2) of this section shall be provided.

(1) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial conditions from that date to the date of the most recent interim balance sheet provided also shall be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the institution.

(2) *Material changes in results of operations.* Discuss any material changes in the institution's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. Such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the institution has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

(d) *Financial statements.* The following financial statements shall be provided:

(1) An interim balance sheet as of the end of the most recent fiscal quarter and as of the end of the preceding fiscal year. A balance sheet for the comparable quarter of the preceding fiscal year is optional.

(2) Interim statements of income for the most recent fiscal quarter, for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable periods for the previous fiscal year.

(3) Interim statements of changes in financial condition and statements of changes in capital for the period between the end of the preceding fiscal year and the end of the most recent

fiscal quarter, and for the comparable period for the preceding fiscal year.

(e) Review by independent public accountant. The interim financial information need not be audited or reviewed by an independent public accountant prior to filing. If, however, a review of the data is made in accordance with the established professional standards and procedures for such a review, the institution may state that the independent accountant has performed such a review. If such a statement is made, the report of the independent accountant on such review shall accompany the interim financial information.

(f) If any amount that would otherwise be required to be shown by this subpart with respect to any item is not material, it need not be separately shown. The combination of insignificant items is permitted.

5. Section 620.20 is amended by revising paragraph (c) to read as follows:

Subpart C—Association Annual Meeting Information Statement

§ 620.20 Preparing, distributing, and filing the information statement.

* * * * *

(c) The statement shall incorporate by reference the annual report to shareholders required by Subpart A of this part. In addition, if any institution holds its annual meeting of shareholders more than 134 days after the end of its fiscal year, the statement shall be accompanied by the most recent quarterly statements required by Subpart B of this part.

* * * * *

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

Subpart A—Accounting Requirements

6. Section 621.2 is amended by revising paragraph (a)(15)(iii) to read as follows:

§ 621.2 Definitions.

* * * * *

(a) * * *

(15) * * *

(iii) It is severely past due and not adequately secured, not in process of collection, and not fully collectible with respect to all principal and interest; or

* * * * *

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration Board.

[FR Doc. 86-13120 Filed 6-11-86; 8:45 am]

BILLING CODE 6705-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

Market Surveillance; Reports—General Provisions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has reviewed the data it currently receives for market surveillance from members of contract markets, futures commission merchants (FCMs), foreign brokers and individual traders. For a number of markets it has found that the growth in trading volume, open interest, and account size of individual traders enables the Commission to carry out its market surveillance program with fewer reports.

Accordingly, as part of its efforts to eliminate unnecessary reporting, the Commission has adopted amendments to its reporting regulations under the Commodity Exchange Act, as amended ("Act"), to raise position levels in certain commodities for which Forms 103 and 40 must be filed by traders and series '01 reports and Form 102s must be filed by members of contract markets, FCMs and foreign brokers.

The overall effect of this final agency action is to alleviate a reporting burden on the public which has become unnecessary and to reduce the amount of paperwork processed by the Commission.

EFFECTIVE DATE: June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Associate Director, Market Surveillance Section, (202) 254-3310.

SUPPLEMENTARY INFORMATION: Reporting levels are set in various commodities to ensure that the Commission receives adequate information to carry out its market surveillance programs, which include detection and prevention of market congestion and price manipulation and enforcement of speculative limits.[1] In addition, the information serves as a basis to gauge overall hedging and speculative uses of the futures market, use of the markets by foreign participants and other matters of public and/or Congressional concern.

Generally, Parts 17 and 18 of the regulations require reports from members of contract markets, FCMs or foreign brokers and traders, respectively, when a trader holds a "reportable position," *i.e.*, an open position held or controlled by a trader at the close of business in any one future of a commodity traded on any one contract market equal to or in excess of the quantities fixed by the Commission in § 15.03(a) of the regulations. See Rule 15.00(b), 17 CFR 15.00(b) (1985).

Members of contract markets, FCMs and foreign brokers who carry accounts in which there are "reportable positions" of traders are required to identify such accounts on a Form 102 and report on the series '01 forms any reportable positions in the account, the delivery notices issued or stopped by the account and any exchanges of futures for physicals. Traders who own or control reportable positions are required to file annually a CFTC Form 40 giving certain background concerning their trading in commodity futures and, on call by the Commission, must submit a Form 103 showing positions and transactions in the commodity specified in the call.

The Commission has determined that the growth in trading volume, open interest, and position sizes of individual traders in certain markets enables the Commission to maintain effective surveillance of those markets with fewer reports from members of contract markets, FCMs, foreign brokers and the trading public. Accordingly, as part of its ongoing efforts to reduce reporting burdens, where possible, the Commission has determined that reporting levels should be raised for the following commodities: sugar #11 and copper from 150 contracts to 200 contracts; silver bullion from 100 contracts to 150 contracts; heating oil from 50 contracts to 75 contracts; crude oil from 50 contracts to 100 contracts; long-term Treasury bonds from 300 contracts to 500 contracts; long-term Treasury notes, Eurodollars and foreign currencies from 100 contracts to 200 contracts; the Amex Major Market Index (MAXI) and municipal bonds from 25 contracts to 50 contracts; and the Value Line Average index from 25 to 100 contracts.

The Commission for good cause finds that the notice and public procedure for raising reporting levels in the above commodities is unnecessary. 5 U.S.C. 533(b). The amendments to the reporting levels are routine determinations, and in this particular instance are insignificant in nature and impact. As a result, these amendments are inconsequential to the

[1] The following commodities are those for which Commission speculative limits are in effect: wheat, grains (including oats, barley and flaxseed), corn, soybeans, rye, eggs, cotton and potatoes. 17 CFR Part 150 (1985).

industry and public. The Commission requires reports of traders' futures positions to carry out certain provisions of the Act and, as noted above, the Commission has determined that such reports at existing reporting levels for certain commodities no longer are necessary for these purposes. In this respect, the increase in reporting levels for these commodities reduces an existing reporting burden. The Commission reviews its reporting levels on a routine basis to ensure that the reporting burdens are in the public interest. Accordingly, the Commission is adopting the amendments to Rule 15.03(a) effective June 16, 1986.

The Regulatory Flexibility Act

As the Commission has not published a prior general notice of proposed rulemaking with respect to these amendments which are relief measures, the amendments are not "rules" as that term is defined in section 3(a) of the Regulatory Flexibility Act ("RFA"), Pub. L. 96-354, 94 Stat. 1165 (5 U.S.C. 601(2)).[2]

Paperwork Reduction Act

The Paperwork Reduction Act of 1980, Pub. L. 96-511, 94 Stat. 2812 et seq. ("PRA"), imposes certain requirements on federal agencies, including the Commission, in connectioin with their conducting or sponsoring any collection of information as defined by PRA 44 U.S.C. 3501 et seq. OMB control number 3038-0009 has previously been assigned to those regulations within Parts 15, 17 and 18 which impose collection of information and recordkeeping requirements. In compliance with the Act the Commission has submitted this final rule and its associated information collection requirements to the Office of Management and Budget.[3]

Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254-9735.

List of Subjects in 17 CFR Part 15

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending Part 15 as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for Part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c (a)-(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C. 552 and 552(b) unless otherwise noted.

2. Section 15.03(a) is revised to read as follows:

§ 15.03 Quantities fixed for reporting.

(a) The quantities for the purpose of reports filed under Parts 17 and 18 of this chapter are as follows:

Commodity	Quantity
Wheat (bushels)	500,000
Corn (bushels)	500,000
Soybeans (bushels)	500,000
Oats (bushels)	300,000
Cotton (bales)	5,000
Soybean oil (contracts)	150
Soybean meal (contracts)	150
Live cattle (contracts)	100
Hogs (contracts)	50
Sugar No. 11 (contracts)	200
Sugar No. 12 (contracts)	100
Copper (contracts)	200
Gold (contracts)	200
Silver bullion (contracts)	150
Silver coins (contracts)	50
Platinum (contracts)	50
No. 2 Heating oil (contract)	75
Crude oil (contracts)	100
Leaded gasoline (contracts)	50
Long-term U.S. Treasury bonds (contracts)	500
GNMA (contracts)	100
Three-month (13-week) U.S. Treasury bills (contracts)	100
Long-term U.S. Treasury notes (contracts)	200
Domestic certificates of deposit (contracts)	50
Three-month Eurodollar time deposit rates (contracts)	200
Foreign currencies (contracts)	200
Standard and Poor's 500 stock price index (contracts)	300
New York Stock Exchange composite index (contracts)	100
Amex Major Market stock index (contracts)	100
Amex Major Market index-maxi (contracts)	50
Municipal bonds (contracts)	50
Value Line Average index (contracts)	100
All other commodities (contracts)	25

* * * * *

Issued in Washington, DC, on June 6, 1986, by the Commission.

Jean Webb,

Secretary of the Commission.

[FR Doc. 86-13236 Filed 6-11-86; 8:45 am]

BILLING CODE 6351-01-M

[2] That section defines the term "rules" as "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title. . . ."

[3] See 44 U.S.C. 3502(4) (Supl. v. 1981) defining the term "collection of information."

17 CFR Part 33

Domestic Exchange-Traded Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of effective date of rule amendment.

SUMMARY: On April 8, 1986, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** notice of its amendment of rule § 33.4(a)(6) which expands the pilot program for options on futures contracts on domestic agricultural commodities from the current level of two option contracts permitted to be traded by each exchange to five. *See* 51 FR 11905. The Commission indicated, however, that the amendment would not become effective until the expiration of thirty calendar days of continuous session of Congress after the transmittal of the rule amendment and related materials to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry and the publication in the **Federal Register** of a notice of the effective date of the rule amendment.

The Congressional review period specified in section 4(c) of the Act (7 U.S.C. 6c(c)) has now expired. Accordingly, the Commission is providing notice that the amendment to § 33.4(a)(6) of its regulations, as published at 51 FR 11905, became effective on June 3, 1986.

EFFECTIVE DATE: June 3, 1986.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-6990.

List of Subjects in 17 CFR Part 33

Commodity options, Commodity futures, Commodity exchange designation procedures.

Issued in Washington, DC, on June 6, 1986 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-13237 Filed 6-11-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

Outer Continental Shelf Minerals and Rights-of-Way Management, General

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending the title of Subpart D of 30 CFR Part 256 and revising §§ 256.23(b) and 256.26(a) to indicate that nominations of areas which should be considered for leasing in the Outer Continental Shelf (OCS) are requested. The amendments are intended to clarify the scope of information solicited from the public.

EFFECTIVE DATE: This rule shall be effective July 14, 1986.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone: (703) 648–7816.

SUPPLEMENTARY INFORMATION: Under section 8 of the OCS Lands Act (Act), the Secretary of the Interior is authorized to receive information concerning, and nominations of, areas of the OCS which may be of interest for mineral leasing. The regulations concerning this authority at §§ 256.23 and 256.26, however, use only the word "information" when referring to the request (the call) for information and nominations. The use of the single term "information" does not reflect the practice or purpose of MMS in implementing section 8 of the Act. The MMS routinely requests and accepts information and nominations concerning areas of interest for mineral leasing. Consequently, MMS concludes that the words "and Nominations" should be added to the phrase "Call for Information where it appears in §§ 256.23 and 256.26 to conform the language of the regulations to that of the law and reflect the actual practice of MMS.

Administrative Procedure Act

Because this rule only conforms the language of an existing rule to the language of the Act and MMS's generally understood practice, MMS has determined notice and an opportunity to comment are unnecessary and that good cause exists to issue the rule as a Final Rule. Therefore, this rule will be effective 30 days from the date of publication in the **Federal Register.**

Executive Order 12291

The Department of the Interior (Department) has determined that this rule is not a major rule and does not require the preparation of a regulatory impact analysis under Executive Order 12291.

This rulemaking has minimal, if any, economic effect on any business, large or small, as it only addresses a clarification to an existing rule. The clarification does not change any function or requirement that is presently being performed or enforced.

Regulatory Flexibility Act

The implementation of this rulemaking will not affect small (or large) businesses since it is a clarification of an existing rule. The Department has determined that this rule will not have a significant economic effect on a substantial number of small entities. Therefore, a small entity flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is not required.

Paperwork Reduction Act of 1980

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C 3501 et seq. and assigned clearance number 1010–0006.

National Environmental Policy Act of 1969

It is determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: May 9, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth in the preamble, 30 CFR Part 256, is amended as follows:

PART 256—[AMENDED]

1. The authority citation for Part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 stat. 629.

2. The title of Subpart D is revised to read as follows:

Subpart D—Call for Information and Nominations

3. Section 256.23(b) is revised to read as follows:

§ 256.23 Information on areas.

* * * * *

(b) In accordance with an approved program and schedule for the leasing of OCS lands which may contain oil and gas, the Director shall issue Calls for Information and Nominations on areas for leasing of such minerals in specified areas. The Call for Information and Nominations shall be published in the **Federal Register** and may be published in other publications as desirable. Information on areas shall be addressed to the appropriate regional Minerals Manager of the Minerals Management Service with a copy to any other office which may be specified in the Call. The Director shall also request comments on areas which should receive special concern and analysis. For an oil and gas lease sale Call area, the Director may request comments concerning geological conditions, including bottom hazards; archeological or cultural sites on the seabed or nearshore; multiple uses of the proposed leasing area, including navigation, recreation, and fisheries; and other socioeconomic, biological, and environmental information.

4. Section 256.26(a) is revised to read as follows:

Subpart E—Area Identification and Tract Size

§ 256.26 General.

(a) The Director, in consultation with appropriate Federal Agencies, shall recommend to the Secretary areas identified for environmental analysis and consideration for leasing. The Director, on his/her own motion, may include in the recommendation areas in which interest has not been indicated in response to a Call. In making a recommendation, the Director shall consider all available environmental information, multiple-use conflicts, resource potential, industry interest and

other relevant information. Comments received from States and local governments and interested parties in response to Calls for Information and Nominations shall be considered in making recommendations.

* * * * *

[FR Doc. 86-13274 Filed 6-11-86; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110 and 165

[CGD3-86-02]

Temporary Regulations, New York Harbor, July 2-5, 1986

AGENCY: Coast Guard, DOT

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing temporary regulations for New York Harbor and Upper New York Bay for Operation Sail '86 and the International Naval Review being held in conjunction with the Statue of Liberty ceremonies July 2-5, 1986. This document contains the regulations necessary to conduct these activities in a safe and orderly manner. Among these are: (1) The regulations for the Parade of Sail and related events; (2) regulations for special anchorages for the International Naval Review, (3) safety zones for fireworks displays to be held as part of the festivities, and (4) security zones for the protection of dignitaries attending the festivities.

These temporary regulations are issued to augment those regulations which govern navigation in the Port of New York contained in Title 33, Code of Federal Regulations. These temporary local regulations will affect navigation in the Port of New York during the period 6:00 a.m., July 2 to 12:00 p.m., July 5, 1986, and are required because of hazardous conditions that will be occasioned by the arrival of a large number of sail training ships, naval vessels, and spectator craft participating in and observing an International Naval Review and Operation Sail 1986.

EFFECTIVE DATE: These regulations become effective on July 2, 1986 and terminate on July 5, 1986. Certain sections of the regulations are in effect for less than the full period. In these sections, the effective dates and times are clearly specified.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade T.S. Kuhaneck, Vessel Movement Officer, Commander, Coast Guard Group New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was published in the **Federal Register** (51 FR 6066) on February 19, 1986. The closing date for submitting comments was April 7, 1986. The Coast Guard distributed copies of the NPRM to vessel operators, trade organizations, Federal Agencies, state and local agencies, environmental groups, boating organizations, and to persons who had previously expressed interest in the proposed regulations. A total of 16 letters were received offering comment on the proposed rules. The commenters included concerned individuals, waterfront business operators, local agencies, boating publications, and boating organizations. The regulation is being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date. A change in the location of the principle reviewing site for this event and the details surrounding the change unavoidably delayed publication of this regulation.

Drafting Information

The drafters of this notice are LCDR K.J. Eldridge and LTJG T. S. Kuhaneck, project officers, Coast Guard Group New York and Ms. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

Discussion of Comments and Changes Made

The majority of the comments received regarding the NPRM addressed the configuration and space allocation of the Coast Guard's proposed anchorage areas in the Upper New York Bay for the Liberty Weekend activities. The Coast Guard's policy regarding these anchorages revolves around the concept of port safety and preserving life and property on the navigable waters of the United States. Because of their size and maneuvering characteristics, vessels greater than 100 feet require special consideration in boating events as large as Opsail '86. When underway in densely populated boating areas, this size vessel presents a significant navigational problem to all concerned. The Coast Guard's intent with the configuration and space allocation arrangement of the anchorage areas indicated in the NPRM was to position the vessels greater than 100 feet in areas that would allow them to remain stationary for the duration of the festivities. By minimizing the need for these vessels to be underway, the Coast Guard hopes to maximize the safety factor for the other spectator craft involved in the event. Due to the draft constraints of these vessels, they can only be safely positioned in the deeper water of the Upper New York Bay. Additionally, the majority of the vessels greater than 100 feet will require an anchorage for several days. The Coast Guard's intent regarding the anchorage areas for vessels 100 feet and less is to provide areas for these vessels to safely anchor while not viewing the festivities. These temporary regulations allow vessels to transit anchorage areas and traverse the length of the parade route by remaining on either side but not crossing the route itself. Vessels may also position (not anchor) themselves in areas designated as naval anchorages during the parade. The Coast Guard anticipates that the majority of the vessels 100 feet and less will not require an overnight anchorage. The Coast Guard also anticipates that the majority of these vessels will remain underway for the Parade of Sail, as they did during the Bicentennial Celebration in 1976.

Eight commenters generally opposed the amount of space allocated to spectator vessels 100 feet and less in the proposed temporary anchorage areas in Upper New York Bay. The commenters felt that more space should be created for these vessels. Based on these comments, an additional temporary anchorage in the vicinity of Ellis Island was created for boats and spectator vessels 100 feet and less. Additionally, the proposed anchorage area boundaries were expanded to accommodate more spectator craft. Concerned individuals are advised that these temporary anchorages created specifically for this event do not comprise all of the anchorage areas available for spectator craft for the event. There are numerous Federal Anchorages located in the vicinity or along the Tall Ship parade route. Among these are anchorages located in the Hudson River (Federal Anchorages 16, 17, 18A, 18B), Newark Bay (Federal Anchorages 34, 36, and 37), and Sandy Hook (Federal Anchorages 28, 45A, 46, and 47). Several of these areas particularly in the Hudson River, afford excellent viewing and anchoring areas. Again, it was not the intent of the Coast Guard that the temporary anchorage areas created specifically for the event be the sole areas for spectator vessels to anchor.

Eight commenters generally opposed the arrangement of the allotted areas of the temporary spectator anchorages. The commenters felt that their view of the Parade of Sail would be obstructed by vessels greater than 100 feet, Naval vessels, and other obstructions. The

Coast Guard feels that to ensure the safety of all spectator craft, spectator anchorage areas must be created and segregated. The cutoff point chosen for these anchorages was 100 feet. This was the same cutoff that was used in the Bicentennial Celebration of 1976. For the forthcoming festivites the Coast Guard is establishing more anchorage areas for a greater period of time than were in effect for the Bicentennial Celebration in 1976. The intent behind the spectator anchorages for vessels greater than 100 feet was that as many as possible of these vessels would be assigned spots and would be encouraged to remain at these spots for the duration of the festivities. Vessels of this size pose particular safety concerns especially when underway in company with numerous smaller craft. These craft also require extremely large amounts of unencumbered water to anchor safely. Therefore, areas were designated solely for vessels of this size. The intent was that the anchorage areas for vessels greater than 100 feet also be the principal viewing areas for these vessels so as to reduce the need for these vessels to move during the festivities. Also, these larger vessels require deeper water in which to anchor because of their navigational drafts; hence, their locations within the Upper New York Bay. The intent of the anchorages for vessels 100 feet and less was to provide areas for anchoring these vessels overnight. The parade route is approximately eighteen miles long. The regulations allow the vessels to traverse the length of the parade route if they so desire. No vessel may cross the parade route. This option was not clearly stated in the proposal nor clearly indicated in the chartlets included in the NPRM. Vessels may position themselves as close to the parade route as safely practicable. This means vessels 100 and less feet can actually position (not anchor) themselves in front of larger vessels. This capability was not accurately portrayed on the chartlets included in the NPRM. During the parade, vessels may also traverse or position themselves in the areas designated as Naval Anchorages. Again, this will allow smaller vessels to move through or around larger, anchored vessels. The intent of the anchorages for vessels 100 feet and less was to provide some anchorage areas for those vessels staying multiple days in the area within this category. Indeed, the Coast Guard anticipates that the significant portion of the vessels within this category will only be on scene in the Upper New York Bay for the Parade of Sail and the fireworks display and will not require an overnight anchorage.

One commenter suggested that spectator craft be allowed to anchor on the eastern side of the Hudson River in the vicinity of the World Trade Center. The commenter went on to state that this procedure was allowed during the Bicentennial Celebration in 1976. The large number of Naval vessels attending the International Naval Review has necessitated the creation of additional Naval anchorages in the lower Hudson River area. To safely accommodate these vessels and to minimize the risk of a mishap, the parade route for the Tall Ships was shifted to the east in the vicinity of the Battery. This, in combination with the spectator stands located just north of the Battery, prohibits allowing spectator craft from anchoring near the World Trade Center. As a reminder, during the parade, spectator craft may position themselves anywhere along the parade route with the exception of areas designated as security or safety zones.

One commenter suggested that areas be designated as locations to embark and disembark passengers and that these locations be publicized and indicated on navigational charts. The commenter went on to say that these areas and their locations would be useful information if an emergency necessitated that personnel be evacuated from a spectator vessel. Other than the few marinas in the port area, no permanent sites exist to embark or disembark passengers. The Coast Guard understands that commercial operators will be establishing locations in the port area for this purpose. At this time, the details regarding embarkation locations are not available. When these details are available, the Coast Guard intends to publish the locations of these sites in a forthcoming Local Notice to Mariners that will be available free to the boating public. Indicating these locations on charts is beyond the scope of this regulation and could cause significant logistical difficulties for all concerned. Reproduction of several charts indicating these areas could not be accomplished prior to the event without undue expense. Indication on navigational charts would not ensure that the boating public will purchase or use these charts. Additionally, given the lead time necessary to produce the charts, they could not be effectively distributed to the boating public prior to the event. Additionally, there will be numerous Coast Guard and Coast Guard Auxiliary vessels on scene in any one area. Should an emergency arise necessitating personnel evacuation, these vessels will be available to assist the individual(s) concerned.

One commenter suggested that the Coast Guard create an outline on partially transparent paper that could be superimposed over a nautical or geodetic chart indicating the anchorage areas. The commenter indicated that the NPRM was confusing at times and that the latitude and longitude coordinate method for indicating anchorage areas was beyond the scope of most pleasure boat operators. The Coast Guard recognizes that plotting the multitude of coordinates enumerated in the NPRM is beyond the scope of most boaters. The Coast Guard intends to publish a Local Notice to Mariners regarding this event that will provide more detail and address the needs of the boating public. The overlay suggestion would be as difficult to implement as the aforementioned chart suggestion for the same reasons.

One commenter, the Department of Sanitation for New York City, sought exemption from the regulation prohibiting commercial traffic operation during periods of time from July 3-5, 1986. This department oversees the removal of refuse from New York City and its transmittal to a local landfill. The refuse is transported by barge to the landfill. The barges are towed to the landfill by a local commercial towing firm. The Coast Guard recognizes the need for the New York City Department of Sanitation to be able to conduct their refuse removal operations with minimal interference, especially during the forthcoming festivities. Hence, the Coast Guard has granted the New York City Department of Sanitation, Division of Marine Transportation an exemption from the regulation prohibiting commerical traffic operation for specific periods of time. This exemption appears in the final rule as paragraph (b)(13) of § 100.35–323. No sanitation barge operations are permitted during commercial closure periods on July 4, 1986.

One commenter suggested that the Coast Guard assign vessels to patrol and police the temporary spectator anchorage areas created for vessels greater than 100 feet. The commenter went on to say that without such a measure boats that were illegally anchored would pose a safety problem for those vessels anchoring with permits in assigned areas. Due to the extensive nature of the parade route and the numerous safety/security zones being enforced, the Coast Guard resources available for this event will be utilized to the maximum extent possible. This does not include an assigned anchorage

patrol. However, Coast Guard and Coast Guard Auxiliary craft will be available to render assistance to boaters when unsafe conditions exist. The Coast Guard Patrol Commander and Sector Commanders will determine if an unsafe condition exists and what the appropriate Coast Guard response will be to that condition. This same commenter also suggested that the Coast Guard assign a specific anchorage for each vessel assigned a permit. The Coast Guard concurs with this suggestion. As was planned in the NPRM, the Coast Guard will be assigning individual anchorage locations to those vessels greater than 100 feet granted a permit to anchor. Additionally, this commenter suggested that the vessels receiving a permit be allowed to place temporary marker buoys to clearly indicate that vessel's anchorage location. Although this method may facilitate vessels moving to and from the anchorage spots somewhat, the safety and logistics considerations associated with this operation prohibit Coast Guard approval of this particular suggestion. The placement of these floats prior to the event could pose a serious safety problem for commercial vessel traffic navigating in their vicinity.

One commenter generally suggested that the Coast Guard establish an anchorage grid area by marker buoys so that vessels may anchor in rows and sections based upon length similar to marina docking arrangements. The commenter pointed out that this arrangement would facilitate access to the areas by emergency personnel. This suggestion was not adopted for the following reasons. This type of arrangement would require all of the attending spectator craft to pre-register for the event. It would also require the Coast Guard to exactly determine the number of boats attending and establish a corresponding number of mooring locations. Without pre-registration, the Coast Guard could only "guess" at the amount of spectator vessels attending the festivities. An underestimate on our part would cause a considerable inconvenience of the "other" boater. An overestimate wastes money, resources and time and does not effectively utilize the anchorage space set aside for the event. Additionally, placing a mooring in a particular location implies Coast Guard approval of the site as a mooring location. Indeed, the site may be suitable for a vessel of one size and configuration and not suitable for a vessel of another size and shape. Also, a site may not be suitable for the same size vessel under differing weather or load conditions. Mariners are cautioned that the areas designated as anchorages have not been subjected to any special survey or inspection and that charts may not show all sea-bed obstructions or the shallowest depths. Mariners are advised to take appropriate precautions when using these temporary anchorages.

Two commenters suggested that the eight knot speed limit regulation proposed in the NPRM be expanded. Both commenters sought an expansion of the area of enforcement and an extension of the period of applicability. The commenters felt that extending the regulation would reduce the hazards associated with high volumes of marine traffic moving swiftly through narrow and congested waterways, particularly the East River. It would also minimize the effect of wake damage to marina and waterfront facilities in confined and heavily trafficked waterways. The Coast Guard concurs with these suggestions and has extended both the times and scope of the regulation regarding the speed limit for the event. Paragraph (c) of S 100.35–323 describes the speed limit restriction and its area of enforcement.

One commenter suggested that the Coast Guard use three vessel size classifications rather than two (up to 29', 30' to 100', and over 100'). This commenter went on to say that more anchorage areas should be created for the two smaller classes along the eastern edge of the lower Hudson River and that the middle classification be allowed to anchor within the areas set aside for Naval Vessels. As previously stated, because of a shifting of the parade route to the east in the area of the lower Hudson River, an anchorage site in this area is not feasible. Vessels of any size may already transit or position themselves within Naval vessel anchorages during the Parade of Sail. Reclassification of spectator vessels into three categories would not change the substance of these regulations nor provide any particular benefit to the boater.

Two commenters suggested that the Coast Guard establish the spectator anchorages earlier than 6:00 a.m., July 3, 1986. Both commenters suggested that the temporary anchorages be established as early as 12:00 p.m., 2 July, 1986. Implementing this suggestion would involve disestablishing numerous Federal anchorages in the area of the spectator anchorages and redesignating the area for spectator craft use. If the temporary spectator anchorages created specifically for the event were the sole places for spectator craft to anchor, this suggestion would merit implementation. The Coast Guard feels that there is sufficient space in the Federal Anchorages in the area around New York Harbor to safely accommodate early arrivals of spectator craft. Waiting to establish the temporary spectator anchorages until 6:00 a.m., July 3, 1986, will ensure that the impact of these regulations on the marine industry is the minimum necessary to complete the scheduled events safely.

Numerous changes and additions were made to these regulations based upon verbal comments and discussions with concerned individuals or other Coast Guard personnel. Several of these changes were made when plans regarding the Liberty Weekend activities were significantly altered. The first set of changes prohibits seaplane operations on the East River on July 3, 1986 from 8:00 a.m. until 1:00 p.m., and extends the limits of the one-way traffic scheme in the East River. These additions are necessary to ensure the safe transit of approximately two hundred sailing vessels from Long Island Sound through the East River to various anchorages in Gravesend and Sandy Hook Bays. The second change modified the parade route north of the George Washington Bridge to allow vessels to transit past the bridge during the Parade of Sail. This change eliminates the segmenting of the Hudson River incorporated in the NPRM. The third change occurs to the Governors Island Temporary Anchorage for vessels greater than 100 feet. The establishment of the July 3rd Governors Island security zone eliminates the use of this anchorage for July 3, 1986. This security zone also prohibits vessel traffic in the area between Governors Island and Liberty Island for a portion of time on the night of July 3, 1986. Vessel traffic can still proceed around Governors Island using Buttermilk Channel, located to the east of Governors Island. This zone is necessary for the protection of dignitaries who will be on Governors Island that evening. The addition of a security zone on July 4, 1986, on the western side of Governors Island will prohibit spectator traffic from transitting along the parade route in this area. Again, this zone is established for dignitary protection. Again, the alternate route to use around Governors Island is Buttermilk Channel. In addition to these two security zones in the vicinity of Governors Island, one more is necessary for dignitary protection around the Statue of Liberty on July 5, 1986. Slight alterations were made to the Battery Safety Zone delineated in the NPRM to ensure spectator craft are kept a safe distance away from the actual fireworks display barges. Additionally, a slight

alteration was made to the southwestern boundary of this zone to provide additional viewing area for spectator craft. These small alterations do not significantly alter the shape or size of the safety zone as originally proposed. Naval vessels no longer require the use of Federal Anchorage No. 19. This will allow this anchorage area to be used for boats and spectator vessels of all sizes. If the use of this anchorage is required by naval vessels, boats and spectator vessels anchored therein shall move when directed by the Captain of the Port. The need to accommodate more vessels greater than 100 feet at anchor in the Upper Bay for the Parade of Sail necessitated creating additional temporary anchorages in the Upper Bay. The need was determined by the large number of applications for anchorage permits. Two additional anchorages were created, Governors Island and Robbins Reef Parade Anchorages. Additionally, the time of expiration for all anchorages was extended from 6:00 a.m. to 12:00 p.m. July 5, 1986. This change will cause minimal inconvenience to the marine industry and significantly facilitate spectator and Naval vessel movement on July 5, 1986. Some minor adjustments were made to the temporary Opsail Vessel anchorages in Sandy Hook Bay. These changes were made to avoid location conflicts with designated fishing zones in the vicinity of these temporary anchorages. Additionally, the Chapel Hill North Channel was erroneously omitted from the Vessel Movement section and the closure of Federal Anchorage 49F was erroneously omitted from the anchorage section of the NPRM. These changes were included in the final rule. Another change was that an additional exemption was granted to the Staten Island Ferries. During normal ferry service operations, these vessels will be exempt from the speed limit restrictions of these regulations. These vessels produce minimal wake at service speed and the eight knot speed limit would cause undue hardship on the people using the ferries by causing an excessively long transit between terminals. The excessively long transits would cause significant delays and backlogs to this important and necessary commuter service. The final change was the addition of a section prohibiting the movement of barges for a period of time on July 4th and 5th and the modification of a definition in the final rule. The Coast Guard did not anticipate that individuals would use barges as spectator or entertainment platforms for the Opsail '86 festivities. There is no precedent for this tupe of operation in an event such as Opsail '86. For this reason and the special nature of barge operations, a paragraph was added to Section 100.35–323 to cover the use of barges during the Opsail '86 festivities. Additionally, the definition of "spectator vessel" was modified by adding "Subchapter C (uninspected vessels)" to the description to include barges.

The anchorage regulations in this document are issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110. The safety zone regulations are issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part of 165. The security zone regulations are issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

This Final rule is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule will be so minimal that a full regulatory evaluation is unnecessary. These regulations will be in effect for only four days. Commercial traffic will be prohibited from the Upper New York Bay for only a portion of that four day period. At no time during the four day period will commercial shipping access to Port Newark/Port Elizabeth facilities be prohibited. Access to Port Newark/Port Elizabeth can be accomplished via Raritan Bay, Arthur Kill, Kill Van Kull and Newark Bay. This will allow the majority of the maritime industrial activity in the Port of New York to continue unaffected. Staten Island Ferry service will be curtailed for only the minimum amount of time necessary to ensure safe operation during the increased harbor activities. OPSAIL 1986, the International Naval Review, and the July 4th Fireworks display may attract additional recreational boaters and tourists to the Port of New York area which would have a favorable economic impact on commercial facilities providing services to these boaters and tourists. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water).

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Parts 100, 110 and 165 of Title 33, Code of Federal Regulations, are amended as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary § 100.35–323 to read as follows:

§ 100.35–323 Operation Sail 1986 and International Naval Review, Port of New York.

(a) *Definitions.* As used in this section and § 110.T301:

(1) "Boat" means any vessel manufactured or used primarily for non-commercial use; leased, rented, or chartered to another for the latter's non-commercial use, or engaged in the carrying of six or fewer passengers, and all tugboats and towboats not engaged in towing operations.

(2) "Coast Guard Auxiliary Vessel" means a vessel accepted by the Director of Auxiliary as an Operational Facility and operated by a member of the Coast Guard Auxiliary under official Coast Guard orders.

(3) "Commercial Vessel" includes any vessel subject to the regulations contained in Title 46, Code of Federal Regulations, Chapter I, Subchapter D (Tank Vessels), Subchapter H (Passenger Vessels) or Subchapter I (Cargo and Miscellaneous Vessels), including foreign vessels otherwise exempt by virtue of 46 CFR 30.01–5(e), 70.05–3(b), and 90.05–1(a)(1), except that vessels that meet the definition of a "boat" in this section shall not be included.

(4) "Length overall (LOA)" means the extreme length of a vessel excluding the bowsprit.

(5) "Narrows" means the water of New York Harbor bounded by the following coordinates: From latitude 40°36'00" North to latitude 40°37'00" North.

(6) "Naval Vessels" includes United States Navy and Coast Guard vessels and foreign naval vessels participating

in the International Naval Review on July 4, 1986 in New York Harbor sponsored by the United States Navy.

(7) "Navigate" includes being underway or anchored.

(8) "New York Harbor" includes the following waterways: the Lower Bay, Narrows, Upper Bay, East River, and Hudson River to latitude 40°54'00" North. It does not include the Kill Van Kull, Newark Bay, and Arthur Kill.

(9) "OPSAIL '86 Vessels" includes all vessels participating in Operation Sail 1986 under the auspices of the Marine Event Permit submitted by OPERATION SAIL 1986, Inc. and approved by the Captain of the Port, New York.

(10) "Public Vessel" means a vessel owned, employed, or bare-boat chartered and operated by the United States or by a State or political subdivision thereof.

(11) "Seaplane" includes any aircraft designed to maneuver on the water.

(12) "Spectator Vessel" includes any commercial vessel primarily carrying passengers but not engaged in an international voyage, or any vessel subject to the regulations contained in Title 46, Code of Federal Regulations, Chapter I, Subchapter C (Uninspected Vessels), Subchapter R (Nautical Schools) and Subchapter T (Small Passenger Vessels).

(13) "Upper Bay" means the waters of New York Harbor bounded by the following coordinates: From latitude 40° 37'00" North (0.65 nautical miles North of the Verrazano Bridge) to 40°42'00 North (The Battery).

(14) "Vessel" includes every description of watercraft or other artificial contrivance, used or capable of being used, as means of transportation on the water, except "Public Vessels" and "Coast Guard Auxiliary Vessels".

(b) *Vessel movement.*—(1) Hell Gate, East River. From 8:00 a.m. until 1:00 p.m., July 3, 1986 the area north of latitude 40°45'00" North and east of longitude 73°58'00" West in the East River shall be restricted to one-way southbound traffic. No vessel shall transit this area northbound during this period (See chartlet V).

(2) Ambrose Channel, the Narrows and Upper Bay. From 10:00 a.m. until 1:00 p.m., July 3, 1986, no commercial vessel shall navigate in Ambrose Channel and the Narrows. From 11:30 a.m. until 4:00 p.m., July 3, 1986, no commercial vessel shall navigate in the Upper Bay. This closure is to ensure the safe and orderly transit of U.S. and foreign naval vessels to assigned anchorages in the Upper Bay in preparation for the International Naval Review.

(3) Staging area, South of the Verrazano Bridge. From 6:00 a.m. until 1:00 p.m., July 4, 1986, no commercial or spectator vessel shall navigate in the area bounded by the following coordinates: Beginning at latitude 40°33'30" North, longitude 74°02'00" West, thence to latitude 40°36'21" North, longitude 74°02'50" West, thence to latitude 40°36'33" North, longitude 74°02'11" West, thence to latitude 40°33'30" North, longitude 74°01'13" West, thence to the beginning point. (See Chartlet I).

(4) Upper Bay and Narrows. From 6:00 a.m. July 4, 1986, until 6:00 a.m., July 5, 1986, no commercial vessel shall navigate in the Upper Bay and Narrows without the permission of the Coast Guard Captain of the Port, New York.

(5) Hudson River. From 8:00 a.m. until 11:00 p.m., July 4, 1986, no commercial vessel shall navigate in the Hudson River from latitude 40°42'00" North to latitude 40°54'00" North.

(6) Chapel Hill North and South Channels. From 6:00 a.m. until 12:00 p.m., July 4, 1986, no vessel except OPSAIL '86 vessels and assisting tugs shall navigate in Chapel Hill North and South Channels.

(7) Marine Parade Route, Narrows. From 8:00 a.m. until 1:30 p.m., July 4, 1986, no vessel other than OPSAIL '86 vessels, naval vessels and assisting tugboats shall navigate in the area bounded by the following coordinates: Beginning at latitude 40°36'21" North, longitude 74°02'51" West, thence to latitude 40°38'39" North, longitude 74°03'37" West, thence to latitude 40°38'39" North, longitude 74°03'21" West, thence to latitude 40°36'26" North, longitude 74°02'36" West, thence to the beginning point.

(8) Marine Parade Route, Upper Bay. From 8:00 a.m. until 3:00 p.m., July 4, 1986, no vessel other than OPSAIL '86 vessels, naval vessels and assisting tugboats shall navigate in the area bounded by the following coordinates: Beginning at latitude 40°38'39" North, longitude 74°03'37" West, thence to latitude 40°39'23" North, longitude 74°03'25" West, thence to latitude 40°41'31" North, longitude 74°01'53" West, thence to latitude 40°42'00" North, longitude 74°01'40" West, thence to latitude 40°42'00" North, longitude 74°01'23" West, thence to latitude 40°41'31" North, longitude 74°01'36" West, thence to latitude 40°39'23" North, longitude 74°03'09" West, thence to latitude 40°38'39" North, longitude 74°03'21" West, thence to the beginning point.

(9) Marine Parade Route North of the Battery to Weehawken, New Jersey. From 8:00 a.m. until 6:00 p.m., July 4, 1986, no vessel except OPSAIL '86 vessels, naval vessels, and assisting tugboats shall navigate in the area bounded by the following coordinates: Beginning at latitude 40°42'00" North, longitude 74°01'40" West, thence to latitude 40°45'23" North, longitude 74°01'02" West, thence to latitude 40°47'00" North, longitude 73°59'58" West, thence to latitude 40°47'00" North, longitude 73°59'38" West, thence to latitude 40°45'15" North, longitude 74°00'46" West, thence to latitude 40°42'00" North, longitude 74°01'23" West, thence to the beginning point.

(10) Marine Parade Route North of Weehawken, New Jersey, to the George Washington Bridge, Hudson River. From 11:30 a.m. until 6:00 p.m., July 4, 1986, no vessel except OPSAIL '86 vessels, naval vessels, and assisting tugboats shall navigate in the area bounded by the following coordinates: Beginning at latitude 40°47'00" North, longitude 73°59'58" West, thence to latitude 40°47'38" North, longitude 74°59'33" West, thence along western edge of WEEHAWKEN-EDGEWATER CHANNEL to latitude 40°49'32" North, longitude 73°58'15" West, thence to latitude 40°51'07" North, longitude 73°57'18" West, thence to latitude 40°51'02" North, longitude 73°56'55" West, thence to latitude 40°50'11" North, longitude 73°57'15" West, thence to latitude 40°49'24" North, longitude 73°58'02" West, thence to latitude 40°48'23" North, longitude 73°58'42" West, thence to latitude 40°47'00" North, longitude 73°59'38" West, thence to the beginning point.

(11) Marine Parade Route North of George Washington Bridge, Hudson River. From 1:00 p.m. until 5:00 p.m., July 4, 1986, no vessel other than OPSAIL '86 vessels, naval vessels, and assisting tugboats shall navigate the Hudson River in the area bounded by the following coordinates: Beginning at latitude 40°51'07" North, longitude 73°57'18" West, thence to latitude 40°53'00" North, longitude 73°56'00" West, thence to latitude 40°53'00" North, longitude 73°55'29" West, thence to latitude 40°51'10" North, longitude 73°56'44" West, thence to latitude 40°51'02" North, longitude 73°56'55" West, thence to the beginning point.

(12) Staten Island Ferries. The City of New York Department of Transportation Staten Island Ferries, while engaged in normal ferry service, are exempt from the requirements of paragraphs (b)(2) and (c)(1) of this section and from the requirements of paragraph (b)(4) from 6:00 a.m. to 8:30 a.m. and from 1:00 p.m. to 7:30 p.m. on July 4 and from 11:00 p.m. July 4 to 6:00 a.m. July 5, 1986.

(13) New York Sanitation Barges. The City of New York Department of Sanitation, Division of Marine Transportation Barges, while engaged in normal sanitation service, are exempt from the requirements of paragraph (b)(2) of this section and from the requirements of paragraph (b)(4) from 2:00 a.m. to 6:00 a.m., July 5, 1986.

(14) Seaplane Operations. The operation of seaplanes is prohibited in the East River from 8:00 a.m. until 1:00 p.m., July 3, 1986. In this case, the word "operation" means taxiing, landing, and taking-off. This closure is to ensure the safe and orderly transit of approximately 200 sailing vessels down the East River during the aforementioned time period.

(15) Barge Operations. The movement of barges, whatever type and used for whatever purpose, is prohibited in the Upper Bay, Hudson River to the George Washington Bridge, and the East River to the Williamsburg Bridge from 7:00 a.m. July 4, 1986 until 2:00 a.m. July 5, 1986.

(c) *Speed Limit.* (1) From 6:00 a.m., July 3, until 6:00 a.m., July 5, 1986, no vessel shall navigate in the Upper Bay, Narrows, and the East River up to the Queensboro Bridge at a speed in excess of 8 knots, except by authorization of Captain of the Port, New York.

(2) From 6:00 p.m., July 3, until 6:00 a.m., July 5, 1986, no vessel shall navigate in the Hudson river from latitude 40°42'00" North to latitude 40°53'00" North at a speed in excess of 8 knots, except by authorization of Captain of the Port, New York.

(d) *Penalties.* Violators of these regulations shall be subject to the penalties provided in 33 U.S.C. 1236 and 33 CFR 100.50.

PART 110—ANCHORAGE REGULATIONS

3. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

4. In § 110.155, paragraphs (c)(5) and (d)(1) through (15) are suspended for the period from 6:00 a.m. July 3, 1986 until 12:00 p.m. July 5, 1986.

5. In § 110.155, paragraphs (e)(1), (m)(2) and (m)(3) are suspended for the period from 6:00 a.m. July 3, 1986 until 12:00 p.m. July 4, 1986.

6. In § 110.155 a temporary paragraph (f)(1)(iii) is added to read as follows:

§ 110.155 Port of New York.

* * * * *

(f) * * *

(1) * * *

(iii) For the period from 6:00 a.m. July 2, until 12:00 p.m. July 4, 1986, the area enclosed by the following coordinates is excluded from Anchorage No. 26: Beginning at latitude 40°28'14" North, longitude 74°01'09" West, thence to latitude 40°28'05" North, longitude 74°02'24" West, thence to latitude 40°26'39" North, longitude 74°02'00" West, thence to latitude 40°26'39" North, longitude 74°01'00" West, thence to the beginning point.

* * * * *

7. A temporary § 110.T301 is added to read as follows:

§ 110.T301 New York Harbor.

The following temporary anchorage grounds are established for the classes of vessels specified. (See Chartlet III). Mariners are cautioned that the areas designated as anchorage grounds have not been subject to any special survey or inspection and that charts may not show all sea-bed obstructions or the shallowest depths. In addition, the anchorages are in areas of substantial currents, and not all anchorages are over good holding ground. Mariners are advised to take appropriate precautions when using these temporary anchorages. These are not special anchorage areas. Vessels must display anchor lights required by the navigation rules. The anchorages in paragraph (a) through (f) of this section require a permit from Captain of the Port, New York. The anchorages in paragraphs (g) and (h) of this section do not require a permit and space in these anchorages will not be assigned. The definitions set forth in Section 100.35–323 apply to this section.

(a) Governors Island Temporary Anchorage: From 6:00 a.m. July 4, 1986, until 12:00 p.m., July 5, 1986, the area bounded by the following coordinates is established as a temporary anchorage for boats and spectator vessels greater than 100' LOA, and OPSAIL vessels: Beginning at latitude 40°40'44" North, longitude 74°01'59" West, thence to latitude 40°40'58" North, longitude 74°01'50" West, thence to latitude 40°41'04" North, longitude 74°01'36" West, thence to latitude 40°40'57" North, longitude 74°01'27" West, thence to latitude 40°40'47" North, longitude 74°01'33" West, thence to the beginning point.

(b) Governors Island Parade Anchorage: From 6:00 a.m. July 4, 1986, until midnight, July 4, 1986, the area bounded by the following coordinates is established as temporary anchorage for boats and spectator vessels greater than 100' LOA: Beginning at latitude 40°40'57" North, longitude 74°01'50" West, thence to latitude 40°40'49" North, longitude 74°02'06" West, thence to latitude 40°40'41" North, longitude 74°02'13" West, thence to latitude 40°40'44" North, longitude 74°01'59" West, thence to the beginning point.

(c) Narrows Temporary Anchorage: From 6:00 a.m. July 3, 1986, until 12:00 p.m., July 5, 1986, the area bounded by the following coordinates is established as temporary anchorage for boats and spectator vessels greater than 100' LOA, and OPSAIL vessels: Beginning at latitude 40°38'20" North, longitude 74°02'14" West, thence to latitude 40°38'22" North, longitude 74°02'22" West, thence to latitude 40°38'00" North, longitude 74°02'40" West, thence to latitude 40°37'21" North, longitude 74°02'50" West, thence to latitude 40°36'32" North, longitude 74°02'24" West, thence to latitude 40°36'34" North, longitude 74°02'12" West, thence along the shoreline to the beginning point.

(d) New Jersey Temporary Anchorages: From 6:00 a.m. July 3, 1986, until 12:00 p.m., July 5, 1986, the areas bounded by the following coordinates are established as a temporary anchorages for boats and spectator vessels greater than 100' LOA, and OPSAIL vessels:

(1) Jersey Flats. Beginning at latitude 40°40'04" North, longitude 74°03'04" West, thence to latitude 40°40'10" North, longitude 74°03'15" West, thence to latitude 40°39'40" North, longitude 74°03'36" West, thence to latitude 40°39'36" North, longitude 74°03'23" West, thence to the beginning point.

(2) Caven Point. Beginning at latitude 40°40'59" North, longitude 74°02'28" West, thence to latitude 40°41'09" North, longitude 74°02'50" West, thence to latitude 40°40'43" North, longitude 74°03'08" West, thence to latitude 40°40'24" North, longitude 74°03'24" West, thence to latitude 40°40'09" North, longitude 74°03'01" West, thence to the beginning point.

(e) Robbins Reef Parade Anchorage: From 6:00 a.m. July 4, 1986, until 6 a.m., July 5, 1986, the area bounded by the following coordinates is established as a temporary anchorage for boats and spectator vessels greater than 100' LOA: Beginning at latitude 40°39'40" North, longitude 74°03'37" West, thence to latitude 40°39'35" North, longitude 74°03'24" West, thence to latitude 40°39'24" North, longitude 74°03'30" West, thence to latitude 40°38'52" North, longitude 74°03'39" West, thence to latitude 40°38'58" North, longitude 74°03'54" West, thence to latitude 40°39'27" North, longitude 74°03'43" West, thence to the beginning point.

(f) Bay Ridge Temporary Anchorage: From 6:00 a.m. July 3, 1986, until 12:00 p.m., July 5, 1986, the area bounded by the following coordinates is established as a temporary anchorage for boats and spectator vessels greater than 100' LOA, and OPSAIL vessels: Beginning at latitude 40°40'22" North, longitude 74°01'35" West, thence to latitude 40°40'20" North, longitude 74°01'28" West, thence to latitude 40°39'49" North, longitude 74°01'23" West, thence to latitude 40°38'54" North, longitude 74°02'19" West, thence to latitude 40°38'42" North, longitude 74°02'32" West, thence to latitude 40°39'03" North, longitude 74°02'26" West, thence to the beginning point.

(g) Boat and Spectator Vessel Anchorages: From 6:00 a.m. July 3, 1986 until 12:00 p.m. July 5, 1986, the areas bounded by the following coordinates are established as anchorages for boats and spectator vessels 100 ft and less in length (LDA). Mariners are advised that boats and spectator vessels may also be positioned in the naval vessel anchorages established by paragraph (j) of this section, but mariners are cautioned to anticipate larger vessels swinging at anchor in this anchorage and to take appropriate precautions.

(1) Constable Hook. Beginning at latitude 40°39'28" North, longitude 74°03'43" West, thence to latitude 40°39'32" North, longitude 74°03'55" West, thence to latitude 40°39'28" North, longitude 74°04'10" West, thence to latitude 40°39'41" North, longitude 74°04'31" West, thence to latitude 40°39'45" North, longitude 74°04'56" West, thence to latitude 40°39'47" North, longitude 74°05'30" West, thence to latitude 40°39'24" North, longitude 74°05'20" West, thence to latitude 40°39'20" North, longitude 74°04'57" West, thence to latitude 40°38'58" North, longitude 74°03'55" West, thence to the beginning point.

(2) Jersey Flats. Beginning at latitude 40°40'07" North, longitude 74°03'18" West, thence to latitude 40°40'16" North, longitude 74°03'39" West, thence to latitude 40°39'50" North, longitude 74°03'57" West, thence to latitude 40°39'40" North, longitude 74°03'36" West, thence to the beginning point.

(3) Jersey City. Beginning at latitude 40°41'09" North, longitude 74°02'50" West, thence to latitude 40°41'29" North, longitude 74°03'35" West, thence to latitude 40°41'03" North, longitude 74°04'13" West, thence southeast along the northern face of the Claremont Terminal Pier to the end of the pier, thence to latitude 40°40'24" North, longitude 74°03'24" West, thence to latitude 40°40'43" North, longitude 74°03'08" West, thence to latitude 40°40'52" North, longitude 74°03'03" West, thence to latitude 40°40'56" North, longitude 74°03'07" West, thence to the beginning point.

(4) Ellis Island. Beginning at latitude 40°42'18" North, longitude 74°02'03" West, thence to latitude 40°42'20" North, longitude 74°02'08" West, thence south along the shoreline to latitude 40°41'51" North, longitude 74°03'00" West, thence to latitude 40°41'26" North, longitude 74°02'11" West, thence to latitude 40°41'30" North, longitude 74°02'08" West, thence to latitude 40°41'41" North, longitude 74°02'29" West, thence to latitude 40°41'52" North, longitude 74°02'39" West, thence to latitude 40°42'03" North, longitude 74°02'25" West, thence to latitude 40°41'58" North, longitude 74°02'18" West, thence to the beginning point.

(h) Hudson River Spectator Anchorage: From 6:00 a.m. July 3, 1986 until 12:00 p.m., July 5, 1986, the area bounded by the following coordinates is designated as an anchorage area for boats and spectator vessels:

(1) Beginning at a point on the Manhattan shoreline at latitude 40°46'48" North, longitude 73°59'22" West, thence to latitude 40°46'55" North, longitude 73°59'42" West, thence to latitude 40°48'23" North, longitude 73°58'42" West, thence to latitude 40°49'24" North, longitude 73°58'02" West, thence to latitude 40°50'11" North, longitude 73°57'15" West, thence to latitude 40°50'06" North, longitude 73°57'02" West, thence following the shoreline to the beginning point.

(2) When the use of this anchorage is required by naval vessels, the vessels anchored therein shall move when the Captain of the Port directs them.

(i) OPSAIL '86 Vessel Anchorages: From 6:00 a.m. July 2, 1986 until 12:00 p.m. July 4, 1986, the areas bounded by the following coordinates are established as temporary anchorages for OPSAIL '86 vessels:

(1) Gravesend Bay, beginning at latitude 40°36'03" North, longitude 74°00'52" West, thence to latitude 40°36'12" North, longitude 74°01'28" West, thence to latitude 40°35'57" North, longitude 74°02'19" West, thence to latitude 40°34'21" North, longitude 74°01'46" West, thence to latitude 40°34'57" North, longitude 74°00'25" West, thence to the beginning point. (See Chartlet I).

(2) Sandy Hook Bay, beginning at latitude 40°28'31" North, longitude 74°01'43" West, thence to latitude 40°28'05" North, longitude 74°02'24" West, thence to latitude 40°26'39" North, longitude 74°02'00" West, thence to latitude 40°26'42" North, longitude 74°01'06" West, thence to latitude 40°27'52" North, longitude 74°01'15" West, thence to latitude 40°27'57" North, longitude 74°01'36" West, thence to the beginning point. (See Chartlet II).

(3) North of Naval Weapons Station Earle, beginning at latitude 40°28'23" North, longitude 74°02'19" West, thence to latitude 40°28'48" North, longitude 74°04'03" West, thence to latitude 40°28'18" North, longitude 74°04'32" West, thence to latitude 40°28'06" North, longitude 74°03'20" West, thence to latitude 40°27'47" North, longitude 74°02'42" West, thence to the beginning point.

(j) Naval Vessel Anchorages: From 6:00 a.m. July 3, 1986 until 12:00 p.m., July 5, 1986, the areas bounded by the following coordinates are established as temporary anchorages for naval vessels (See Chartlets III and IV):

(1) Beginning at latitude 40°38'37" North, longitude 74°03'49" West, thence to latitude 40°38'23" North, longitude 74°03'37" West, thence to latitude 40°36'26" North, longitude 74°02'57" West, thence to latitude 40°36'21" North, longitude 74°03'11" West, thence to latitude 40°37'30" North, longitude 74°04'04" West, thence to latitude 40°38'36" North, longitude 74°04'13" West, thence to the beginning point.

(2) Beginning at latitude 40°40'23" North, longitude 74°02'11" West, thence to latitude 40°40'22" North, longitude 74°01'36" West, thence to latitude 40°39'03" North, longitude 74°02'26" West, thence to latitude 40°38'44" North, longitude 74°02'33" West, thence to latitude 40°38'03" North, longitude 74°02'49" West, thence to latitude 40°38'03" North, longitude 74°03'04" West, thence to latitude 40°38'38" North, longitude 74°03'16" West, thence to latitude 40°39'19" North, longitude 74°03'04" West, thence to latitude 40°40'19" North, longitude 74°02'26" West, thence to beginning point.

(3) Beginning at latitude 40°45'18" North, longitude 74°01'14" West, thence to latitude 40°45'18" North, longitude 74°01'00" West, thence to latitude 40°41'55" North, longitude 74°01'41" West, thence to latitude 40°41'26" North, longitude 74°02'00" West, thence to latitude 40°41'41" North, longitude 74°02'29" West, thence to latitude 40°42'18" North longitude 74°02'02" West, thence to the beginning point.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

8. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6-04-6, and 160.5.

9. Part 165 is amended by adding temporary §§ 165.T388, 165.T389, 165.T398, 165.T399 and 165.T300 to read as follows:

§ 165.T388 Safety Zone: Upper New York Bay, Statute of Liberty.

(a) *Location.* The following area is a safety zone: Beginning on the shoreline at latitude 40°41'27" North, longitude 74°03'23" West; thence to 40°41'51" North, longitude 74°03'00" West; thence to latitude 40°41'25" North, longitude 74°02'11" West; thence to latitude 40°40'59" North, longitude 74°02'27" West; thence to the beginning point. (See Chartlet VI).

(b) *Effective Date.* This section becomes effective on July 3, 1986 at 8:00 a.m. It terminates on July 5, 1986 at 8:00 a.m.

(c) Regulation:

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

(2) Persons violating this regulation are subject to a civil penalty not to exceed $25,000 or a criminal penalty of imprisonment for not more than five years or a fine of not more than $50,000, or both.

§ 165.T389 Safety Zone: Upper New York Bay, The Battery.

(a) *Location.* The following area is a safety zone: Beginning on the shoreline at the base of pier 15 East River thence along the Manhattan shoreline to latitude 40°43'17" North, longitude 74°01'00" West, thence across the Hudson River to Pier M Latitude 40°43'25" North, longitude 74°01'48" West, thence along pierhead line to latitude 40°42'43" North, longitude 74°02'02" West; thence to a point on the Governors Island shoreline at latitude 40°41'35" North, longitude 74°01'12" West; thence east along the Northern shoreline to the ventilator at latitude 40°41'32" North, longitude 74°00'43" West; thence to the Southwest corner of pier 5, Brooklyn; and thence along the shoreline to Southwest corner pier 1, Brooklyn and thence across East River to Southeast corner of pier 15 East River, thence along the pier to the beginning point. (See Chartlet VI).

(b) *Effective Date.* This section becomes effective on July 4, 1986 at 7:00 p.m. It terminates on July 4, 1986 at 11:00 p.m.

(c) Regulation:

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

(2) Persons violating this regulation are subject to a civil penalty of not to exceed $25,000 or a criminal penalty of imprisonment for not more than five years or a fine of not more than $50,000, or both.

§ 165.T398 Security Zone: Upper New York Bay, Governors Island.

(a) *Location.* The following area is a security zone: Beginning at latitude 40°41'26" North, longitude 74°02'11" West, thence to latitude 40°41'02" North, longitude 74°02'26" West, thence to latitude 40°40'46" North, longitude 74°01'45" West, thence to latitude 40°40'58" North, longitude 74°01'24" West, thence to latitude 40°41'01" North, longitude 74°01'21" West, thence to latitude 40°41'04" North, longitude 74°01'23" West, thence along the shoreline to latitude 40°41'34" North, longitude 74°01'12" West, thence to the beginning point.

(b) *Effective Date.* This section becomes effective on July 3, 1986 at 7:00 p.m. It terminates on July 3, 1986 at 11:59 p.m.

(c) Regulation:

(1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

(2) Persons violating this regulation are subject to a criminal penalty of imprisonment for not more than 10 years or a fine of not more than $10,000 or both.

§ 165.T399 Security Zone: Upper New York Bay, Governors Island.

(a) *Location.* The following area is a security zone: Beginning at latitude 40°41'34" North, longitude 74°01'12" West, thence to latitude 40°41'31" North, longitude 74°01'36" West, thence to latitude 40°40'49" North, longitude 74°02'06" West, thence to latitude 40°41'04" North, longitude 74°01'36" West, thence along the shoreline to the beginning point.

(b) *Effective Date.* This section becomes effective on July 4, 1986 at 8:00 a.m. It terminates on July 4, 1986 at 2:00 p.m.

(c) Regulation:

(1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

(2) Persons violating this regulation are subject to a criminal penalty of imprisonment for not more than 10 years or a fine of not more than $10,000 or both.

§ 165.T300 Security Zone: Upper New York Bay, Liberty Island.

(a) *Location.* The following area is a security zone: Beginning on the shoreline at latitude 40°41'51" North, longitude 74°03'00" West, thence to 40°41'25" North, longitude 74°02'11" West, thence to latitude 0°41'02" North, longitude 74°02'27" West, thence to latitude 40°41'27" North, longitude 74°03'23" West, thence to along the shoreline to the beginning point.

(b) *Effective Date.* This section becomes effective on July 5, 1986 at 8:00 a.m. It terminates at noon on July 5, 1986.

(c) Regulation:

(1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

(2) Persons violating this regulation are subject to a criminal penalty of imprisonment for not more than ten years or a fine of not more than $10,000 or both.

Dated: June 3, 1986.

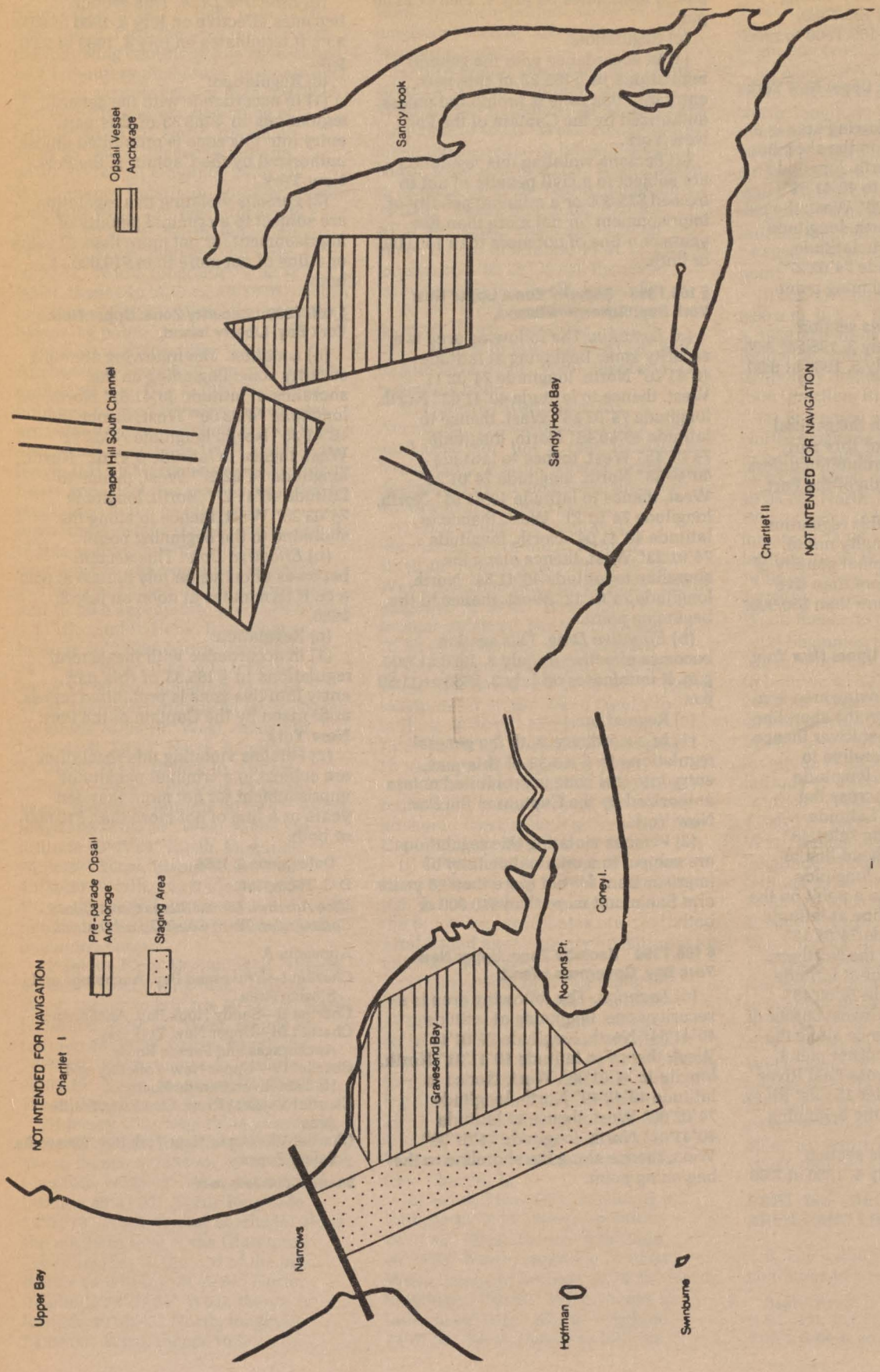
D.C. Thompson,

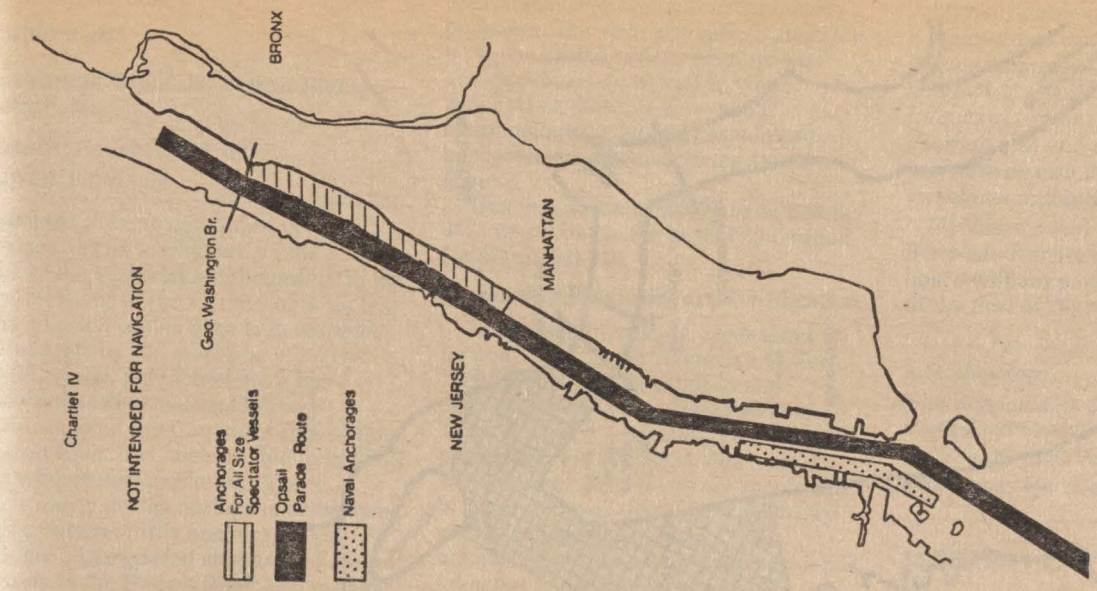
Vice Admiral, United States Coast Guard, Commander, Third Coast Guard District.

Appendix A

Chartlet I—Gravesend Bay, Anchorage and Staging Area
Chartlet II—Sandy Hook Bay, Anchorages
Chartlet III—Upper New York Bay, Anchorages and Parade Route
Chartlet IV—Upper New York Bay and Hudson River, Parade Route
Chartlet V—East River, One Way Traffic Area
Chartlet VI—Upper New York Bay, Fireworks Safety Zones

BILLING CODE 4910-14-M


Opsail Vessel Anchorage
Sandy Hook
Chapel Hill South Channel
Sandy Hook Bay
Chartlet II
NOT INTENDED FOR NAVIGATION
Pre-parade Opsail Anchorage
Staging Area
NOT INTENDED FOR NAVIGATION
Chartlet I
Norton's Pt.
Coney I.
Gravesend Bay
Narrows
Upper Bay
Hoffman
Swinburne


BRONX
Geo. Washington Br.
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NEW JERSEY
Chartlet IV
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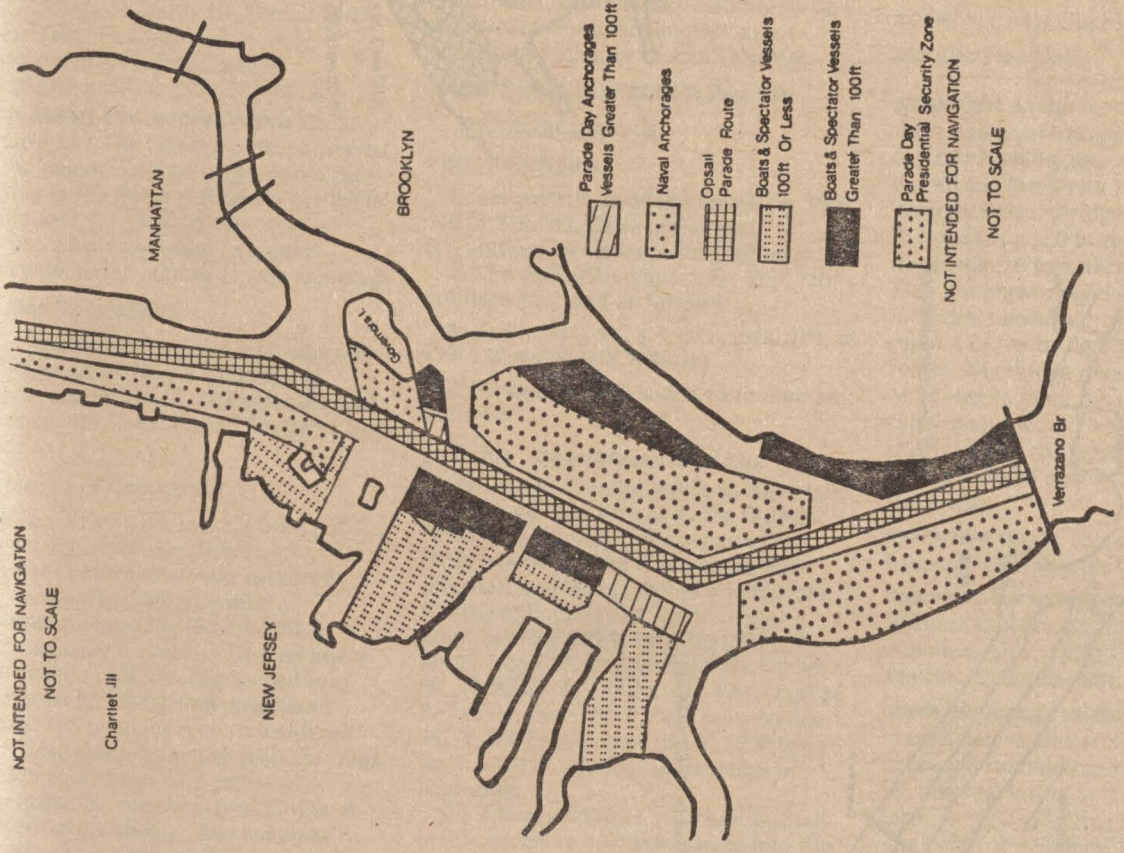
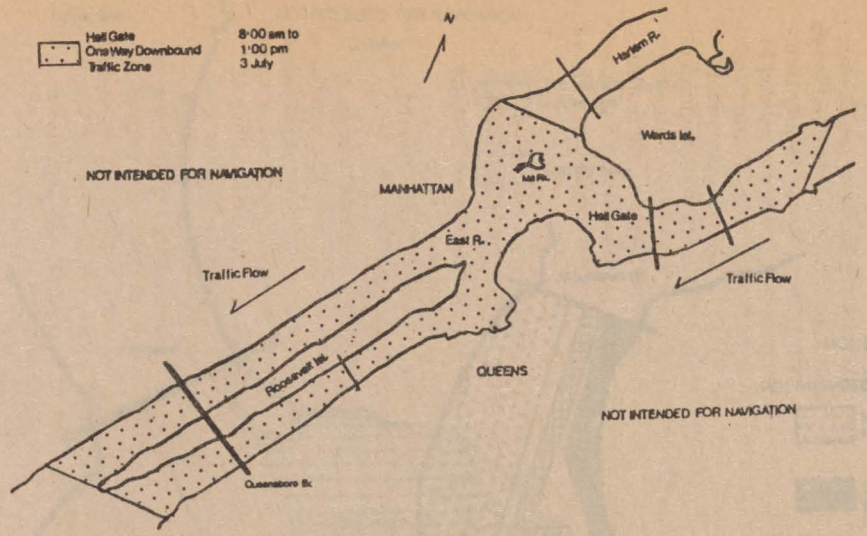
Anchorages For All Size Spectator Vessels
Opsail Parade Route
Naval Anchorages


MANHATTAN
BROOKLYN
Governors I.
NEW JERSEY
Chartlet III
NOT INTENDED FOR NAVIGATION
NOT TO SCALE
Parade Day Anchorages Vessels Greater Than 100ft
Naval Anchorages
Opsail Parade Route
Boats & Spectator Vessels 100ft Or Less
Boats & Spectator Vessels Greater Than 100ft
Parade Day Presidential Security Zone
NOT INTENDED FOR NAVIGATION
NOT TO SCALE
Verrazano Br

Chartlet V



[FR Doc. 86–13276 Filed 6–11–86: 8:45 am]

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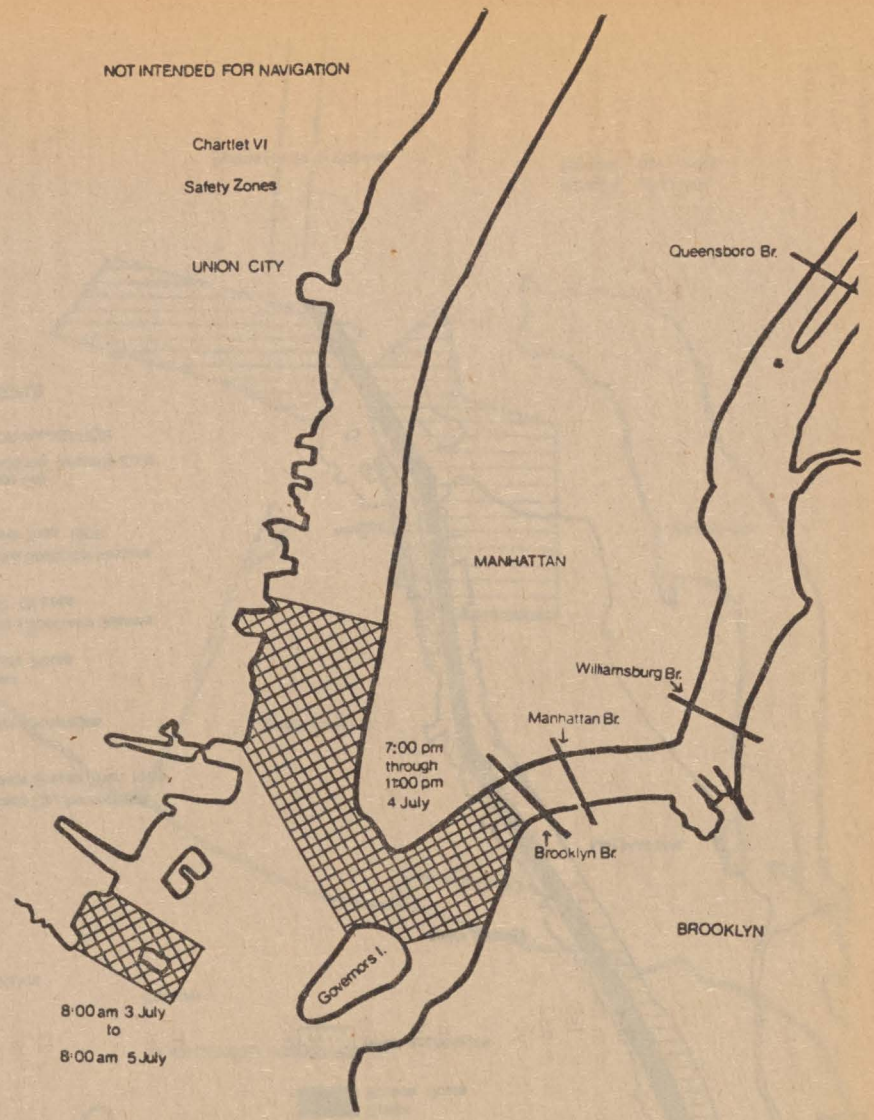

33 CFR Part 110

[CGD0985-05]

Anchorage Grounds; Detroit River, Detroit, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is designating an anchorage on the U.S. side of the international boundary in the Detroit River in the vicinity of Belle Isle. The creation of this area is in response to requests by the maritime industry. Additionally, past experience has shown that the existing Ojibway Anchorage on the Canadian side of the Detroit River has been unable to hold all vessels desiring anchorage space, particularly during spring ice conditions. The creation of this anchorage will provide a designated safe anchorage for vessels in the Detroit River and provide a holding area in the event U.S. authorities need to detain a vessel.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: LTJG George H. Burns III, Ninth Coast Guard District, Marine Port and Environmental Safety Branch. Telephone number (216) 522-3919.

SUPPLEMENTARY INFORMATION: On 21 January 1986 the Coast Guard published a supplemental notice of proposed rule making in the **Federal Register** for these regulations (51 FR 2731). Interested persons were requested to submit comments and 1 comment was received.

Drafting Information

The drafters of these regulations are LTJG George H. Burns III, Project Officer, and LCDR M. A. Leone, Project Attorney, 9th Coast Guard District Legal Office.

Discussion of Comments

Eleven written comments from public, Congressional, professional and Canadian authorities were received concerning the original notice of proposed rulemaking (50 FR 27622). These comments were evaluated and a supplemental notice of proposed rule making (51 FR 2731) was published because the changes were considered too substantial to proceed with the final rule. One comment was received concerning the supplemental notice of proposed rulemaking. This comment suggested that some of the regulations associated with the anchorage as written in the original proposal be retained. The Coast Guard decided that the regulations clarifying who may use the area, and for what length of time, were necessary to insure that the anchorage be used for only temporary purposes. The requirements to maintain a proper bridge watch, to guard and answer channels 16 and 12 were retained so that this rule would complement the existing regulations concerning navigation in the Detroit River.

This regulation is issued to 33 U.S.C. 4171 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact was found to be so minimal that a full regulatory evaluation is unnecessary. This anchorage will be in a location which is adjacent to an area that is already frequently used by the types of vessels that will moor in the anchorage. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 2030, 2035, 2071, 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 110.206 is added to read as follows:

§ 110.206 Detroit River, Michigan.

(a) *The Anchorage grounds.* Belle Isle Anchorage. The area is in the Detroit River immediately downstream from Belle Isle on the the U.S. side of the International Boundary lyng within the following boundaries: beginning at a point bearing 250 T, 5400 feet from the James Scott Memorial Fountain (42 20' 06" N. 82 59' 57" W.) at the West end of Belle Isle; then 251 T, 3000 feet; thence 341 T, 800 feet; thence 071 T, 3000 feet; thence 161 T, 800 feet to the point of beginning.

(b) *The regulations.* (1) Vessels shall be anchored so as not to swing into the channel or across steering courses.

(2) The Belle Isle Anchorage area is for the temporary use of vessels of all types, but especially for naval and merchant vessels awaiting berths, weather, or other conditions favorable to the resumptions of their voyage.

(3) No vessel may be anchored unless it maintains a continuous bridge watch, guards and answers channel 16 FM and channel 12 FM (VTC SARNIA sector frequency), maintains an accurate position plot and can take appropriate action to ensure the safety of the vessel, structures and other vessels.

(4) Vessels may not anchor in the Belle Isle Anchorage for more than 72 hours without permission of the Captain of the Port of Detroit.

Dated: June 2, 1986.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 86-13277 Filed 6-11-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD3 86-04]

Temporary Drawbridge Operation Regulations; Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of New Jersey Department of Transportation, the Coast Guard is issuing temporary regulations permitting the Route 7 (Belleville Turnpike) drawbridge over the Passaic River, at mile 8.9 to remain closed for 45 days from 10 June through 24 July 1986. This temporary regulation is needed to facilitate necessary rehabilitation and repairs of the bridge. This action will relieve the bridge owner of the burden of having to open the draw during the repairs and would only permit marine traffic which can pass under the closed bridge to have access to facilities above the bridge.

EFFECTIVE DATE: This regulation becomes effective on 10 June 1986.

FOR FURTHER INFORMATION CONTACT: William C., Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after the **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since immediate action is needed to repair the bridge and the State of New Jersey has awarded a contract to do so.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project manager, and Mary Ann Arisman, project attorney.

Discussion of Temporary Regulations

Current regulations provide that the draw of the bridge shall open on signal at all times. The temporary regulations would allow the bridge to remain in the closed position from 9 a.m. on June 10, 1986 through 5 p.m. on July 24, 1986, inclusive. Bridge opening logs for June 1985 show 6 openings for commercial vessels and seven for recreational boats. For July 1985, there were 12 openings for commercial vessels and seven for recreational boats.

The deteriorated conditions of the counterweight and trunnion bearings, along with a need for replacement of other bridge structural members, has necessitated the bridge owner to limit normal bridge angle of opening to only 45 degrees except upon special request of vessel operators. A full opening of the span is to approximately a 70 degree angle.

The Belleville Turnpike (Route 7) bridge provides a vertical clearance of 8 feet above Mean High Water and 13 feet above Mean Low Water in the closed position. This is not adequate for transit of any commercial vessels using the upstream oil facility, nor can it accommodate the recreational/charter cruiser which occasionally picks up passengers upstream of the bridge during various weekend periods each spring and summer.

The temporary regulations will affect this vessel for approximately seven weekends. The vessel would have to make arrangements to have passengers board downsteam of the bridge. The owners were advised during the preliminary investigation but made no comment.

The oil facility upstream of the Belleville Turnpike (Route 7) bridge is engaged in both the wholesale and retail market, which provides and stores home heating oil, diesel fuel and kerosene. Coordination between the bridge owner and the upstream oil facility was conducted and an alternative arrived at for minimizing the oil facilities economic costs.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

A final regulatory evaluation has been prepared and placed in the rulemaking docket. Copies may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The expected economic impact of this proposal is a temporary inconvenience to the upstream oil facility in that no petroleum product can be delivered to the facility by marine vessel during the proposed 45 day closure. An agreement was executed where by the facility has agreed not to require openings during the repair period.

This temporary inconvenience and loss of service will be offset by the benefit of improved reliability and more efficient openings. Without these repairs and rehabilitation, it is likely that the bridge could experience an unscheduled failure. An alternative of requiring the bridge to be repaired in the open position, was considered. However, this would result in additional repair costs, possible redesign of repair procedures, rebidding or renegotiating awarded contracts, and extending the time vehicular traffic will have to be rerouted. During the 45 day closure period to marine traffic, repairs will be required to be performed on a multi-shift basis of at leat two 10 hours shifts per day, seven days a week. Additionally, a penalty/incentive clause reportedly will be a part of the contract and apply during the closure period.

Based upon the information in the final evaluation, the Coast Guard certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.739(n) is added to read as follows for the period June 10, 1986 through July 24, 1986. Because this is a temporary rule, this paragraph will not be codified in the CFR.

§ 117.739 Passaic River.

* * * * *

(n) The draw of the Belleville Turnpike (Route 7) highway bridge, mile 8.9 at Belleville shall not be opened for the passage of vessels from 9 a.m. on June 10, 1986 through 5 p.m. on July 24, 1986, inclusive, to effect major repairs.

Dated: June 4, 1986

J. C. Uithol,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 86-13278 Filed 6-11-86; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Parts 3 and 61

Organization of Panama Canal Commission Health, Sanitation and Quarantine

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission is today amending its regulations in Title 35, Code of Federal Regulations, Part 3, Organization of Panama Canal Commission and Part 61, Subpart E, which pertain to health, sanitation and communicable disease surveillance. Part 3 sets forth the text of an obsolete executive order concerning delegations of authority and is amended to set forth the executive order which is now applicable. As for Part 61, many of the functions regulated by Subpart E have been, in accordance with the Panama Canal Treaty of 1977 and its related agreements, transferred to the Republic of Panama, thus making certain provisions obsolete and requiring their removal. Additional changes, reflecting the international character of the Panama Canal, are consistent with recommendations of the World Health Organization and the joint efforts of the Republic of Panama and the Commission, pursuant to the treaty, in the areas of maritime health, sanitation and communicable diseases.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone: (202) 634-6441 or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011-507-52-7511.

SUPPLEMENTARY INFORMATION: On November 28, 1985, a notice of proposed rulemaking was published in the **Federal Register** (50 FR 48605) setting forth the revised rules for the organization of the Panama Canal Commission and also for those functions pertaining to health, sanitation and maritime communicable surveillance. Interested parties were given the opportunity to submit comments by December 26, 1985. While

no comments were received in the allotted time period, the agency did receive comments on January 30, 1986, from the United States Public Health Service's Center for Preventive Services concerning proposed revisions to Part 61. It was felt appropriate, therefore, for the Commission to re-examine certain of its proposals in light of these comments.

The writer points out that smallpox has been removed from the World Health Organization's list of communicable diseases and recommends that the agency do likewise. After ascertaining that smallpox is no longer on the list maintained by the Republic of Panama, where the Panama Canal Commission is located, we have now deleted references to this disease except in § 61.154, where we have included suspected smallpox in the list of communicable diseases which shall be brought to the attention of the Panamanian authorities.

Regarding § 61.154, which contains a list of 25 communicable diseases, the writer observed that in view of the National Advisory Health Council's recommendation to list only five communicable diseases we might wish to reconsider whether or not all the diseases listed in § 61.154 are appropriate. Because of our location and the fact that the listing was drawn mainly from that of the Ministry of Health of the Government of Panama, we have chosen to retain 21 of the 25 communicable diseases in this section.

Section 61.197 has been revised substantially to indicate that the medical officer in charge will report to the Government of Panama any findings of persons suspected of or actually suffering from communicable diseases aboard a vessel.

In response to the writer's remarks concerning the cholera vaccine, which has proved ineffective in preventing the transmission of the disease, we have revised § 61.223 to delete references to the vaccine.

As for the requirements of § 61.243 for deratting, which the writer also questioned, this is required in the Republic of Panama and, therefore, will remain as drafted.

Finally, the writer requests that we change the name cited in § 61.171(a)(1) to the Centers for Disease Control and this has been done.

The following is a brief description of how the rules published today will amend the rules which have been in effect concerning the organization of the Panama Canal Commission and health, sanitation and communicable disease in the Panama Canal.

Executive Order 12173 of December 19, 1979, was promulgated in response to the enactment of the Panama Canal Act of 1979, Pub. L. 96–70. The Panama Canal Act repealed many of the grants of authority concerning the Panama Canal and enacted new grants of authority, consistent with the Panama Canal Treaty of 1977. Executive Order 12173 continued in effect the regulations promulgated under the prior statutes. This executive order has lapsed, in accordance with its terms, and has been superseded by Executive Order 12215 of May 27, 1980. By Executive Order 12215 the President of the United States has delegated specific functions vested in him by the Panama Canal Act of 1979 to the Secretaries of Defense and State. Consequently, 35 CFR Part 3 is amended by removing E.O. 12173 and inserting E.O. 12215.

Subpart E of Part 61 deals with health, sanitation, and communicable disease surveillance. The amendment of Subpart E is necessary to eliminate or revise certain regulations dealing with functions which are no longer the responsibility of the Panama Canal Commission, as a result of the entry into force of the Panama Canal Treaty of 1977 between the United States and the Republic of Panama and the enactment of legislation implementing the terms of that international accord. Nevertheless, Article III of the Treaty provides that the United States may take such measures as are necessary to ensure the sanitation of Panama Canal areas and installations. The Commission is charged with performing functions required to carry out industrial sanitation and health services. As amended, this subpart will deal primarily with communicable disease surveillance of vessels entering the waters of the Panama Canal.

In this regard, all references to aircraft have been removed, inasmuch as the authority to issue regulations concerning air navigation has been superseded by virtue of the treaty. The authority to control the importation of certain articles has also been removed, with the sole exception of § 61.281, concerning dogs and cats, which is revised to indicate that arrangements shall be made with the appropriate veterinary authorities.

Other changes have been made to reflect the recommendations of the World Health Organization and the World Health Assembly and the coordinated efforts of the Commission's Occupational Health Division and the Port Quarantine Office of the Government of Panama to insure the health and safety of employees and the general public.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are first, that the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined that this rule is not subject to the requirements of section 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Parts 3 and 61

Authority delegations, Executive orders, Public health, Sanitation, Communicable disease, Vessels, Quarantine, Occupational health and safety.

Accordingly, 35 CFR Parts 3 and 61, Subpart E are amended as follows:

1. Part 3 is amended by revising § 3.1 to read as follows:

PART 3—ORGANIZATION OF PANAMA CANAL COMMISSION

Subpart A—Delegation of Panama Canal Functions

§ 3.1 Text of Executive Order 12215 of May 27, 1980.

By the authority vested in me as President of the United States of America by the Panama Canal Code (76A Stat. 1), as amended, by the Panama Canal Act of 1979 (93 Stat. 452; 22 U.S.C. 3601 *et seq.*), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1–1. The Secretary of Defense.

1–101. The Secretary of Defense shall develop for the President's consideration an appropriate legislative proposal as required by Section 3(d) of the Panama Canal Act of 1979 (93 Stat. 456; 22 U.S.C. 3602(d)). The Secretary of Defense shall coordinate development of this proposal with the Secretary of State and the heads of other interested Executive agencies.

1–102. The function vested in the President by Section 1212(d)(1) of the Panama Canal Act of 1979 (93 Stat. 464; 22 U.S.C. 3652(d)(1)) to exclude employees of, or positions within, the Department of Defense from coverage under any provision of subchapter II, Chapter 2 of Title I of the Panama Canal Act of 1979, is delegated to the Secretary of Defense.

1–103. The function vested in the President by Section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1–104. The function vested in the President by Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801), with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, is delegated to the Secretary of Defense.

1–105. The functions vested in the President by Sections 1243(c)(1) and 2401 of the Panama Canal Act of 1979 (93 Stat. 474 and 495; 22 U.S.C. 3681(c)(1) and 3851) are delegated to the Secretary of Defense.

1–106. The functions vested in the President by Section 1502(a) of the Panama Canal Act of 1979 (93 Stat. 488; 22 U.S.C. 3782(a)) are delegated to the Secretary of Defense.

1–2. Coordination of Pay and Employment Practices.

1–201. In order to coordinate the policies and activities of agencies under subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463; 22 U.S.C. 3651 *et seq.*), each agency shall periodically consult with the Secretary of Defense with respect to the establishment of rates of pay, in order to develop compatible or unified systems for basic pay. In addition, each agency shall consult with the Secretary of Defense on such other matters as the Secretary may deem appropriate in order to develop compatible or unified employment practices.

1–202. The head of each agency shall, upon approval by the Secretary of Defense, adopt a schedule of basic pay pursuant to Section 1215 of the Panama Canal Act of 1979 (93 Stat. 465; 22 U.S.C. 3655) and adopt regulations governing other matters relating to pay and employment practices.

1–203. The authority vested in the President by Section 1223(a) of the Panama Canal Act of 1979 to coordinate the policies and activities of agencies (93 Stat. 467; 22 U.S.C. 3663(a)) is delegated to the Secretary of Defense. The Secretary shall exercise such functions in a manner which is in accord with the provisions of Sections 1–201 and 1–202 of this Order.

1–3. Panama Canal Commission.

1–301. The functions vested in the President and delegated to the Secretary of Defense in this Section 1–3 of this Order shall be carried out by the Secretary of Defense, who shall, in carrying out the said functions, provide, by redelegation or otherwise, for their performance, in a manner consistent with paragraph 3 of Article III of the Panama Canal Treaty of 1977, by the Panama Canal Commission.

1–302. The authority of the President under Section 1104 of the Panama Canal Act of 1979 (93 Stat. 457; 22 U.S. 3614) to fix the compensation of and to define the authorities and duties of the Deputy Administrator and the Chief Engineer is delegated to the Secretary of Defense.

1–303. The functions vested in the President by Sections 1418, 1801, and 2206 of the Panama Canal Act of 1979 (93 Stat. 487, 492, and 494; 22 U.S.C. 3778, 3811, and 3844) are delegated to the Secretary of Defense.

1–304. The authority of the President under Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801) with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1–305. The function vested in the President by Section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations in the Republic of Panama made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1–306. The functions vested in the President by Sections 82 and 86 of Title 3 of the Panama Canal Code (76A Stat. 54 and 55; 3 P.C.C. 82 and 86), as amended, are delegated to the Secretary of Defense.

1–307. The functions vested in the President by subsections (a), (b) and (c) of Section 8146 of Title 5 of the United States Code, as they apply to the employees of the Panama Canal Commission, are delegated to the Secretary of Defense.

1–308. Except to the extent heretofore delegated, the functions vested in the President pursuant to subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463) are hereby delegated to the Secretary of Defense.

1–4. Other Agencies.

1–401. The functions vested in the President by Sections 1111 and 3301 of the Panama Canal Act of 1979 (93 Stat. 459 and 497; 22 U.S.C. 3621 and 3871), are delegated to the Secretary of State. The Secretary shall perform these functions in coordination with the Secretary of Defense.

1–402. The functions vested in the President by Sections 1112(d), 1344(b), and 1504(b) of the Panama Canal Act of 1979 (93 Stat. 460, 484, and 488; 22 U.S.C. 3622(d), 3754(b), and 3784(b)) are delegated to the Secretary of State.

1–403. The functions vested in the President by Section 1243(a)(1) of the Panama Canal Act of 1979 (93 Stat. 473; 22 U.S.C. 3681(a)(1)) are delegated to the Director of the Office of Personnel Management.

1–404. Paragraphs (22) and (23) of Section 1 of Executive Order No. 11609, as amended, and Executive Order No. 11713 are revoked.

(Issued under the authority vested in President by provisions of 3 U.S.C. 301; 22 U.S.C. 3811; EO 12215, dated May 27, 1980, 45 FR 36043.)

2. The table of contents for Subpart E of Part 61 is revised to read as follows:

PART 61—HEALTH, SANITATION, AND COMMUNICABLE DISEASE SURVEILLANCE

* * * * *

Subpart E—Maritime Communicable Disease Surveillance

Definitions and General Provisions

Measures in Transit

Vessels Subject to Communicable Disease Inspection

Authority: Issued under authority vested in the President by 22 U.S.C. 3811; EO 12215, 45 FR 36043.

3. Subpart E of Part 61 is revised to read as follows:

* * * * *

Subpart E—Maritime Communicable Disease Surveillance

Definitions and General Provisions

§ 61.121 Purpose.

The purpose of the regulations in this subpart is to insure the health and safety of employees of the Panama Canal Commission, to prescribe procedures for coordination with the Government of Panama concerning communicable disease surveillance, and to comply with the recommendations of the World Health Organization concerning such surveillance.

§ 61.122 Definitions.

As used in this subpart:

"Aedes aegypti Index" means the ratio, expressed as a percentage, between the number of houses in a limited well-defined area on the premises of which actual breeding-places of Aedes aegypti are found, and the total number of houses examined in that area.

"Certificate of vaccination" means a certificate of vaccination or revaccination against cholera, or yellow fever conforming with the rules and models prescribed by the International Health Regulations.

"Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a well person from an affected person, animal, or arthropod (including insecta and arachnida) or through the agency of an intermediate host, vector or the inanimate environment.

"Communicable disease surveillance" means the surveillance or quarantine of a person, vessel, or other conveyance, animal or thing, in such place and for such period of time as may be specified in the regulations in this subpart.

"Contamination" means the presence of undesirable substance or material which may contain pathogenic micro-organisms.

"Day" means a period of 24 hours.

"Deratting certificate" means a certificate issued with respect to a vessel by the competent health authority of a port, in the form prescribed by the International Health Regulations, recording the inspection and deratting of the vessel.

"Deratting exemption certificate" means a certificate issued with respect to a vessel by the competent health authority of a port, in the form prescribed by the International Health Regulations, recording the inspection and exemption from deratting of the vessel which has a negligible number of rodents on board.

"Disinfection" means the act of rendering anything free from the causal agents of disease.

"Disinfestation" means the act of destroying the vectors of a communicable disease.

"Disinsecting" means the act of destroying insects or other anthropod vectors of communicable disease.

"Foreign port" means any seaport other than a port of the United States or of the Republic of Panama.

"Fumigation" means the process by which the destruction of vermin and rodents is accomplished by the employment of gaseous agents.

"Immunity" means the condition of being protected against a particular disease, either as a result of artificial immunization or through a previous attack of the disease in question.

"Incubation period" means the period between the implanting of disease organisms in a susceptible person and the appearance of clinical manifestations of the disease.

"Infected area" means an area (as defined in the International Health Regulations): (1) Where there is a nonimported case of cholera, or (2) where there is a nonimported case of plague, or there is plague infection among rodents; or (3) where there is a nonimported case of yellow fever, or there is activity of yellow fever virus in vertebrates other than man.

"Infected person" means any person who is suffering from a quarantinable disease or who is considered by the medical officer in charge to be infected with such a disease.

"Infected vessel" means a vessel determined to be infected with an internationally quarantinable disease, as recognized by the World Health Organization (WHO).

"International Health Regulations" means the regulations adopted by the 22nd World Health Assembly in 1969, as amended by subsequent Assemblies for the International Surveillance of Communicable Diseases, (3rd Edition, Annotated, 1983).

"Isolation" means (1) when applied to a person or group of persons, the separation of that person or group of persons from other persons in such a manner as to prevent the spread of infection; and (2) when applied to animals, the separation of an animal or group of animals from other animals or vectors of disease in such a manner as to prevent the spread of infection.

"Medical officer" means the officer or other specially trained employee assigned to communicable disease surveillance duty by authority of the Chief, Occupational Health Division.

"Medical officer in charge" means the officer of the Panama Canal Commission responsible for the application of these regulations at a designated place or in a designated area.

"Port of Panama" means any seaport in the Republic of Panama.

"Port of the United States" means any seaport in the United States, in the Commonwealth of Puerto Rico, and in territories or possessions of the United States.

"Pratique" means authorization granted by the medical officer in charge in writing or via radio releasing or provisionally releasing a vessel from quarantine, without relieving the vessel from completing the necessary documentation.

"Quarantinable disease" means a specific communicable disease such as cholera, plague, or yellow fever for which WHO requires specific quarantine measures.

"Rodents" means gnawing mammals capable of transmitting or harboring quarantinable diseases.

"Suspect" means a person who is considered by the medical officer in charge as having been exposed to infection by a quarantinable or other dangerous infectious disease and to be capable of spreading that disease.

"Suspected vessel", means a vessel that is suspected to be infected with an internationally quarantinable disease as recognized by WHO.

"Valid" means (1) with respect to a Deratting Certificate or Deratting Exemption Certificate issued for a vessel, a certificate issued by the competent health authority for a port not more than 6 months before presentation of the certificate to the medical officer, or if the vessel is proceeding to a port designated or approved for the issuance of such certificates, not more than 7 months before such presentation; and (2) with respect to a Certificate of Vaccination, a certificate presented within the applicable period of immunity prescribed in § 61.124.

"Vector" means an animal (including insects), plant, or thing which conveys or is capable of conveying pathogenic organisms from a person or animal to another person or animal.

"WHO" means the World Health Organization, an international organization which acts as the directing and coordinating authority on international health work and is charged with eradicating or controlling epidemic, endemic and other diseases.

"Yellow fever receptive area" means an area in which the virus of yellow fever does not exist but where the presence of Aedes aegypti or any other domiciliary or peri-domiciliary vector of yellow fever would permit its development if introduced.

§ 61.123 Periods of isolation and surveillance.

Except as otherwise provided with respect to infected persons, isolation or surveillance shall not exceed the following appropriate incubation period for internationally quarantinable diseases:

(a) Plague: 6 days.

(b) Cholera: 5 days.

(c) Yellow fever: 6 days.

§ 61.124 Periods of immunity.

The following shall be the recognized period of immunity after successful immunication:

(a) Cholera: 6 months, beginning 6 days after the first injection of the vaccine or on the date of a revaccination during such six-month period.

(b) Yellow fever: 10 years beginning 10 days after date of original vaccination or from date of a revaccination within such period of 10 years.

§ 61.125 Sanitary measures previously applied.

(a) Required sanitary measures (other than a medical examination) taken by a vessel with respect to a quarantinable disease need not be repeated upon the vessel's arrival in Panama Canal waters, unless—

(1) After the departure of a vessel from the port where the measures were applied there is or has been on board an infected person or suspect or there has occurred any other incident of epidemiological significance either in the port or on board the vessel which, in the judgment of the medical officer in charge, requires further application of any such measure; or

(2) The medical officer in charge has ascertained, on the basis of definite evidence, that the individual measure so applied was not substantially effective.

(b) Measures taken with regard to unsanitary conditions on vessels entering a port of Panama by means of Panama Canal waters will be coordinated with the Port Quarantine Office of the Government of Panama.

§ 61.126 Certificate of measures applied.

The medical officer in charge shall, upon request, issue free of charge to a carrier a certificate specifying the sanitary measures applied to a vessel, the parts thereof treated, the methods employed, and the reasons why the measures were applied.

Measures in Transit

§ 61.151 Vessels; general provisions.

The measures described in §§ 61.152 through 61.156 must be taken in transit with respect to vessels destined to enter Panama Canal waters.

§ 61.152 Vessels; sanitary inspection and corrective measures.

The master or a designated officer shall make a daily sanitary inspection of all compartments or the vessel normally accessible to passengers or crew. Immediate corrective measures shall be taken if evidence of vermin, rodents or unsanitary conditions is found.

§ 61.153 Vessels; entries in the official record.

A record of the conditions found in a sanitary inspection under section 61.152 and the corrective measures taken shall be entered in an official record.

§ 61.154 Vessels; radio report of disease aboard.

(a) The master of a vessel destined to enter Panama Canal waters shall report promptly by radio to the medical officer of the Panama Canal Commission prior to entering the Panama Canal, and wherever practicable not less than four hours before the expected arrival of the ship, the occurrence or suspected occurrence of any serious human or animal disease manifested by fever, diarrhea, skin rashes and other suspicious symptoms such as may indicate any of the following: Anthrax, cholera or suspected cholera, dengue, diphtheria, encephalitis, gonorrhea, hemolytic streptococcal infections, infectious hepatitis, leprosy, malaria, measles, meningococcal meningitis, plague, poliomyelitis, shigella dysentery, suspected smallpox, syphilis, tuberculosis, typhoid fever, typhus, suspected viral hemorragic fever, yellow fever, or any other diseases which may be added to the list of internationally communicable diseases as recognized by WHO in its International Health Regulations or by the Ministry of Health of the Government of Panama. A disease may also be deleted from this list with the concurrence of the Ministry of Health of the Government of Panama, if it has been removed from the WHO regulations.

(b) The medical officer will notify the Port Quarantine Office of the Government of Panama as soon as information is received that one of the preceding diseases is present or suspected of being present on a ship entering the Panama Canal.

§ 61.155 Vessels; yellow fever.

(a) The following vessels shall be disinsected prior to their arrival in Panama Canal waters, and the master of the vessel shall certify to this effect on the maritime quarantine declaration presented to the medical officer upon arrival:

(1) An infected or suspected vessel as defined in § 61.228; or

(2) A vessel from an infected area; or,

(3) A vessel that has within 15 days left a port where the Aedes aegypti Index is reported as 1.0 or higher.

(b) The insecticide used and method or disinsecting shall be those prescribed by the medical officer in charge.

(c) If the disinsecting required under paragraph (a) of this section is not carried out or if the medical officer in charge finds live mosquitoes on board or otherwise determines that the vessel's

own disinsecting was inadequate, the vessel shall be detained in quarantine at a mooring not less than 400 meters from shore until disinsected by communicable disease surveillance personnel, and persons other than such personnel shall not be allowed on board until disinsecting is completed.

(d) The quarantine officer of the Government of Panama will be informed about every individual vessel disinsected prior to docking in a port of Panama. The Quarantine Office will also receive complete information from the ship's required entry documents on all ships which have either transited the Panama Canal or docked at a port of Panama.

§ 61.156 Vessels; disinsecting.

Vessels required to be disinsected under § 61.155 shall be disinsected as follows:

(a) The insecticide used shall be an aerosol of a type approved by the medical officer in charge;

(b) The insecticide shall be dispensed in the amount to be determined by the medical officer in charge and released or sprayed throughout all accessible compartments;

(c) The ventilating system shall be stopped and all openings to the exterior kept closed while the insecticide is being released or sprayed for a period of at least 15 minutes thereafter.

Vessels Subject to Communicable Disease Surveillance Inspection

§ 61.171 General provisions.

(a) A vessel arriving in Panama Canal waters shall undergo communicable disease surveillance inspection prior to entry unless:

(1) In the current voyage the vessel has not touched at any port other than a port determined by WHO, the quarantine officer of the Government of Panama or the Centers for Disease Control of the United States Public Health Service to be in an area that is exempt from communicable disease surveilliance; or

(2) In the current voyage the vessel has received pratique at a port of Panama or a port of the United States, and since receiving such pratique has met the requirements of subparagraph (a)(1) of this section; or

(3) Pratique has been granted by a medical officer prior to the arrival of the vessel at the Panama Canal.

(b) A vessel otherwise exempt from inspection under the provision of paragraph (a)(1), (2), or (3) of this section shall undergo communicable disease inspection prior to entering the Panama Canal if the vessel—

(1) Has on board, or during the current voyage has had on board, a person infected or suspected of being infected with any serious human or animal disease manifested by fever, diarrhea, skin rashers or other suspicious symptoms;

(2) Arrives directly from a port where at the time of departure there was present or suspected of being present cholera, plaque, or yellow fever.

(3) Being exempt from inspection under the provisions of paragraph (a)(1) of this section, or arrival at the Panama Canal has on board a person who has been in a port or area which is not exempt from communicable disease surveillance within 14 days prior to such arrival; or,

(4) Being exempt from inspection under the provisions of paragraph (a) (1) or (3) of this section, on arrival at the Panama Canal has on board an animal or article that does not comply with the admission requirements contained in this part or prescribed by the Government of Panama.

(c) Notwithstanding the provisions of paragraph (a) (2) and (3) of this section, a vessel having received pratique at a port of Panama or a port of the United States—

(1) Shall comply with any conditions and carry out any additional measures specified in the pratique; and

(2) May be required to undergo communicable disease surveillance inspection if the medical officer in charge has reason to believe that the entry or departure of the vessel would be likely to cause the introduction of communicable disease.

§ 61.172 Exempt vessels subject to sanitary regulations.

A vessel which has been exempted from communicable disease surveillance inspection under § 61.171 shall nevertheless be subject to the provisions of §§ 61.241 through 61.244.

§ 61.173 Report of disease or rodent mortality on vessel during stay in port.

The master of a vessel which has entered the Panama Canal to dock in a port of Panama shall promptly report to the medical officer in charge before re-entering the Panama Canal the occurrence of the following on the vessel during its stay in port:

(a) A known or suspected case of communicable disease included in the list or description in § 61.154.

(b) Unusual mortality or evidence of disease among rodents.

General Requirements Upon Arrival at the Panama Canal

§ 61.191 Applicability.

The measures prescribed in §§ 61.192 through 61.201 shall be taken with respect to vessels which are subject to communicable disease surveillance inspection pursuant to §§ 61.171 and with respect to persons and things arriving on such vessels.

§ 61.192 Vessels; awaiting inspection.

(a) A vessel which must undergo communicable disease surveillance inspection prior to entry shall fly a yellow flag and, except as provided in paragraph (b) of this section, shall anchor in the prescribed anchorage and await inspection.

(b) If the vessel is to dock in a port of Panama, the medical officer, after reaching agreement with the port quarantine officer of the Government of Panama, may authorize the vessel to proceed to a point within the port to await further inspection.

(c) There will be no movement of any person or thing onto or from the vessel without the permission of the port quarantine officer of the Government of Panama pending communicable disease surveillance inspection by appropriate personnel.

§ 61.193 Maritime communicable disease surveillance declaration.

(a) Upon arrival of a vessel, her master shall complete and sign a maritime communicable disease surveillance declaration on the Panama Canal Commission Communicable Disease Surveillance Declaration form. This form is also referred to as the Ship Information and Quarantine Declaration (SIQD). The SIQD shall also be signed by the ship's surgeon if one is carried. The signed form shall be delivered to the Commission's boarding officer when he boards the vessel. The original shall be retained in the Office of Admeasurement. Copies will be sent to the port quarantine officer of the Government of Panama and the Panamanian Ministry of Health. A copy shall be given to the master of the vessel as well.

(b) The master of a vessel and the ship's surgeon, if one is carried, shall furnish all information as to health conditions on board during the voyage which may be required by the medical officer or Chief, Occupational Health Division, and shall comply with the regulations in this subpart and with any directions or requirements of the Chief, Occupational Health Division, pursuant to the regulations in this subpart.

(c) See Ship Information and Quarantine Declaration, § 101.10.

(Approved by the Office of Management and Budget under control number 3207–0001)

§ 61.194 Persons; restrictions on boarding and leaving vessels, or having contact with persons aboard.

Except with the permission of the medical officer or the port quarantine officer, no person other than the pilot may board a vessel subject to communicable disease surveillance inspection until after it has been inspected by the medical officer or port quarantine officer and granted pratique. A person boarding the vessel shall be subject to the same restrictions as those imposed on the persons on the vessel. A person may not leave or be permitted to leave a vessel subject to communicable disease surveillance inspection until after it has been inspected by the medical officer or port quarantine officer and granted pratique, except with the permission of the medical officer or port quarantine officer.

§ 61.195 Communicable disease surveillance inspection and controls.

(a) Communicable disease surveillance inspection of vessels may include, but is not limited to, the following:

(1) Inspection of the vessel, its cargo, manifests, and other papers to ascertain the sanitary history and condition of the vessel; and

(2) Examination of the persons aboard the vessel, their personal effects and records to determine the presence, or risk or introduction, of quarantinable and other communicable diseases.

(b) The medical officer in charge may require a vessel to remain under communicable disease surveillance controls until the completion of the measures authorized in this subpart which in his judgment are necessary to prevent the introduction or spread of a quarantinable or other communicable disease.

§ 61.196 Persons; examination.

If a vessel that is subject to communicable disease surveillance inspection carries a ship surgeon, the examination of persons on board may be limited to those designated by the port quarantine officer of the Government of Panama.

§ 61.197 Vessels; persons and things; communicable diseases other than quarantinable diseases.

Whenever the medical officer has reason to believe that an arriving vessel has a person aboard who is suffering or has been exposed to any of the communicable diseases listed in § 61.154 of this chapter or has an article or thing aboard that is contaminated with any of the same communicable diseases, he will report these findings to the Quarantine Office of the Government of Panama and take whatever measures are indicated to prevent the spread of the communicable disease to the Republic of Panama and to the Panama Canal Commission personnel boarding the vessel.

§ 61.198 Persons; isolation.

Persons held under isolation or surveillance pursuant to these provisions shall not have contact with other persons except by permission of the medical officer.

§ 61.199 Furnishing of fresh crew.

After a vessel has been cleared by the medical officer, it may be furnished with a fresh crew. Crew members boarding the vessel must clear the Quarantine, Immigration and Customs offices of the Government of Panama.

§ 61.200 Disinfection of cargo.

When the freight manifest of a vessel lists articles which may require disinfection under the provisions of this subpart, the medical officer shall:

(a) Request veterinary assistance to inspect and disinfect them on board if the vessel is for transit only.

(b) Notify the port quarantine officer of the Government of Panama if the vessel will enter a port of Panama so that the articles can be disinfected or kept separate from other freight in the port pending appropriate disposition.

§ 61.201 Exemption for mails.

Except to the extent that mail contains any of the foods or beverages specified in § 61.222(d) which the medical officer has reason to believe comes from a cholera-infected area, or any dog or cat subject to communicable disease surveillance restrictions under §§ 61.281, this subpart or destruction any mail conveyed under the authority of the postal administration of the United States or of any other Government.

Particular Requirements Upon Arrival at the Panama Canal

§ 61.221 Applicability.

In addition to the requirements of §§ 61.192 through 61.201, the particular requirements prescribed in §§ 61.222 through 61.229 for persons, vessels, animals, and cargo shall be observed with respect to vessels which are subject to communicable disease surveillance inspection under §§ 61.171. The particular requirements of § 61.226 shall be observed irrespective of whether the vessels are subject to communicable disease surveillance inspection.

§ 61.222 Cholera; vessels and things.

(a) For the purpose of applying sanitary and quarantine measures against the spread of cholera:

(1) An infected vessel means a vessel which has on board on arrival a case of cholera-like diarrhea or on which a case of cholera has occurred within 5 days prior to arrival.

(2) A suspected vessel means a vessel which has had on board during the voyage a severy case of cholera-like diarrhea more than 5 days prior to arrive.

(b) An infected or suspected vessel shall be detained in quarantine as may be necessary for the effective accomplishment of the applicable sanitary measures prescribed in this subpart.

(c) Personal effects and baggage of an infected person or suspect and and part of the infected or suspected vessel considered to be contaminated shall be disinfected. Bedding or linen, human ejecta, bilge water, waste matter or water, and matter considered to be contaminated may not be unloaded or discharged until it has been disinfected by the quarantine officer of the Government of Panama.

(d) On arrival of an infected or suspected vessel, or a vessel arriving from an infected area, the medical officer may prohibit entrance into Panama Canal waters of such vessel until arrangements have been made with the quarantine officer of the Government of Panama at the ports of Panama for evaluation of all fish, shellfish, fruit or vegetables to be consumed uncooked unless such food or beverages are in sealed containers. The quarantine officer of the port of Panama will also evaluate any such food or beverages that form part of the ship's stores.

(e) If the medical officer considers the water supply of a cholera infected or suspected vessel to be contaminated, he shall require the disinfection and removal of any water carried on board and if necessary the disinfection of the water system and of the water containers.

§ 61.223 Cholera; vessels; persons.

(a) Persons ill from cholera shall be isolated and immediate arrangements shall be made with the Quarantine Office of the Government of Panama for treatment of the person.

(b) On arrival of an infected vessel the medical officer shall contact the port

quarantine officer of the Government of Panama to arrange placement under isolation of all persons disembarking.

(c) On arrival of a suspected vessel the medical officer shall contact the port qurantine officer of the Government of Panama to arrange placement under surveillance or isolation of any person disembarking.

(d) The quarantine officers of the Government of Panama shall be contacted regarding isolation or surveillance of any person wishing to disembark from a vessel which within five days prior to arrival has departed from a cholera-infected area or arrives on a vessel which has departed from such an area.

(e) A person who has departed from an infected area within 5 days prior to arrival and who has symptoms indicative of cholera may be required to submit to a stool examination.

§ 61.224 Plague; vessels.

(a) For the purpose of applying sanitary and quarantine measures against the spread of plague:

(1) An infected vessel means a vessel which has on board on arrival a case of human plague, or a plague infected rodent. A vessel shall also be regarded as infected if a case of plague develops on board in a person more than 6 days after his embarkation.

(2) A suspected vessel means (i) a vessel which, not having a case of human plague on board on arrival, has had on board such a case developed by the person within 6 days of his embarkation, or (ii) a vessel on which there is evidence of abnormal mortality of rodents on board, the cause of which is not known on arrival.

(b) An infected or suspected vessel shall be detained in quarantine as may be necessary for the effective accomplishment of the applicable sanitary measures prescribed in this subpart.

(c) On arrival of a vessel which has rodent plague on board the medical officer shall contact the port quarantine officer of the Government of Panama to arrange deratting of the vessel. A vessel which has entered a Panamanian port in or adjacent to Panama Canal waters will not be allowed to re-enter Panama Canal waters until the following provisions have been met during such deratting:

(1) The deratting shall be carried out as soon as the holds have been emptied.

(2) One or more preliminary derattings of a vessel with the cargo in situ, or during its unloading, may be carried out to prevent the escape of infected rodents.

§ 61.225 Plague; vessels; persons; things.

(a) Persons ill from plague shall be isolated until arrangements are made with the quarantine office of the Government of Panama for quarantine and treatment of the person.

(b) On arrival of an infected or suspected vessel the medical officer may:

(1) Require any suspect on board to be disinsected and may place him under surveillance, the period of surveillance being reckoned from the data of arrival of the vessel;

(2) Require the disinsecting and, if necessary, disinfection of the baggage of any infected person or suspect and of any other article such as used bedding or linen; and any part of the vessel which the medical officer considers to be contaminated.

(c) On the arrival of a healthy vessel which has come from a plague-infected area the medical officer may—

(1) Arrange placement under surveillance by the quarantine officer of the Government of Panama of any suspect who disembarks.

(2) Require the deratting of the vessel at the anchorage in exceptional circumstances. In such case, the master shall be informed in writing of the reasons for the action.

§ 61.226 Yellow fever; vessels; classification.

For the purpose of applying sanitary and quarantine measures against the spread of yellow fever:

(a) An infected vessel means a vessel which has on board on arrival or which during its voyage had on board a case of yellow fever.

(b) A suspected vessel means a vessel which has left a yellow fever-infected area within 6 days prior to arrival or which arriving within 30 days after leaving such area has Aedes aegypti mosquitoes on board.

§ 61.227 Yellow fever; vessels; persons.

(a) On arrival of an infected vessel the medical officer shall contact the quarantine officer of the Government of Panama to coordinate removal and isolation of all persons ill with yellow fever until they are no longer infectious.

(b) The medical officer will inform the quarantine office of the Government of Panama of the arrival of any person from an infected area or planning to disembark from an infected or suspected vessel who does not produce a valid certificate of vaccination against yellow fever.

Sanitary Inspection: Rodent And Vermin Control

§ 61.241 General provisions.

(a) Vessels entering Panama Canal waters are subject to sanitary inspection in accordance with § 61.241 through 61.244 to ascertain whether there exists rodent, vermin, or insect infestation, contaminated food or water, or other unsanitary conditions requiring measures for the prevention of the introduction, transmission, or spread of communicable disease.

(b) The Chief, Occupational Health Division of the Panama Canal Commission may require such measures with respect to such vessels as are deemed necessary to:

(1) Carry out the Commission's responsibilities as set forth in the Panama Canal Treaty of 1977 in regards to preserving the health of the employees of the Commission and the sanitation of Panama Canal areas and waters;

(2) Comply with the recommendations of the World Health Organization;

(3) Effect those measures deemed necessary by the Government of Panama;

(4) Prevent the entrance into Panama or the international spread of other communicable diseases designated as a serious threat.

§ 61.242 Disinsecting and disinfection; vessels and persons.

Except as otherwise provided in this subpart—

(a) Vessels may be disinfected on arrival if the medical officer considers disinfestation necessary to prevent the spread of infection or for the destruction of insects and vermin capable of transmitting communicable disease.

(b) The person, effects and baggage of any vermin-infested person arriving aboard a vessel shall be disinsected and, if necessary, in the judgment of the medical officer, disinfected.

§ 61.243 Deratting certificates; deratting exemption certificates.

(a) If a valid Deratting Certificate or Deratting Exemption Certificate is not produced with respect to any arriving vessel—

(1) If the vessel will only transit the Panama Canal and the medical officer is satisfied that the vessel is free of rodents or is kept in such a condition that the number of rodents on board is negligible, the medical officer may clear it for transit. If it is determined that a deratting certificate shall not be issued with respect to the vessel, the medical officer shall notify the Commission's Marine Traffic Control Center and the

Port Quarantine Office of the Government of Panama.

(2) If the vessel will stop in the ports of Balboa or Cristobal, the medical officer will report his findings and recommendations to the Port Quarantine Office of the Government of Panama.

§ 61.244 Vessels in traffic between United States and Panama.

Notwithstanding any other provision of this subpart, vessels engaged in trade between ports of the United States or Panama on entering Panama Canal waters shall be subject to sanitary inspection and measures as described in §§ 61.241 through 61.243, when arriving from a port infected or suspected of being infected with a quarantinable disease or when illness on board indicates unsatisfactory sanitary conditions.

Pratique: Vessels

§ 61.261 General requirements.

Vessels subject to communicable disease surveillance inspections under the provisions of § 61.171 may not enter Panama Canal waters unless a certificate of free pratique or provisional pratique has been granted to the master. When it is not feasible to comply with the requirements for free or provisional pratique, the vessel is at liberty to return to sea:

§ 61.262 Free pratique.

The granting of free pratique signifies that the vessel and its master may enter Panama Canal waters.

§ 61.263 Provisional pratique.

(a) Provisional pratique signifies that the vessel may proceed, but that additional measures regarding the sanitary condition of the vessel, as specified, must be taken in connection with entering or proceeding through the Canal. Free pratique shall be issued after the additional measures have been completed.

(b) The medical officer may notify the next port of such additional measures as may be indicated for a particular vessel to proceed there. The medical officer in charge may contract the quarantine stations at the next port of call regarding additional measures indicated.

§ 61.264 Radio Pratique.

The medical officer in charge may grant pratique to a vessels upon the basis of information regarding the vessel, its cargo and persons aboard, received prior to arrival of the vessel, when in his judgment, and in accordance with general standands set by the Chief, Occupational Health Division of the Commission and the Ministry of Health of the Government of Panama, the entry of the vessel will not result in the introduction, transmission or spread of communicable diseases.

Importation of Dogs and Cats

§ 61.281 Quarantine of dogs and cats.

The owner or person in charge of any dog or cat entering the Panama Canal area from outside the Republic of Panama shall make arrangements with the appropriate veterinary authorities for entry of the animal.

Dated: May 6, 1986.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 86-13130 Filed 6-11-86; 8:45 am]

BILLING CODE 3640-04-M

POSTAL SERVICE

39 CFR Part 10

Final Action on Express Mail International Service to Guyana, Nigeria and Oman

AGENCY: Postal Service.

ACTION: Final action on Express Mail International Service to Guyana, Nigeria and Oman.

SUMMARY: Pursuant to agreements with the postal administrations of Guyana, Nigeria and Oman, the Postal Service intends to begin Express Mail International Service with these countries at postage rates indicated in the tables below. Service is scheduled to begin on July 12, 1986.

EFFECTIVE DATE: July 12, 1986.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, [202] 268-2673.

SUPPLEMENTARY INFORMATION: By a notice published in the **Federal Register** on May 8, 1986 [51 FR 17073], the Postal Service announced that it was proposing to begin Express Mail International Service to Guyana, Nigeria and Oman. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins.

No comments were received. Accordingly, the Postal Service states that it intends to begin Express Mail International Service with these countries on July 12, 1986 at the rates indicated in the tables below.

Lists of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552[a], 39 U.S.C. 401, 404, 407, 408.

GUYANA.—EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service [1] [2]		On demand service [2]	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	34.80	2	26.80
3	38.60	3	30.60
4	42.40	4	34.40
5	46.20	5	38.20
6	50.00	6	42.00
7	53.80	7	45.80
8	57.60	8	49.60
9	61.40	9	53.40
10	65.20	10	57.20
11	69.00	11	61.00
12	72.80	12	64.80
13	76.60	13	68.60
14	80.40	14	72.40
15	84.20	15	76.20
16	88.00	16	80.00
17	91.80	17	83.80
18	95.60	18	87.60
19	99.40	19	91.40
20	103.20	20	95.20
21	107.00	21	99.00
22	110.80	22	102.80
23	114.60	23	106.60
24	118.40	24	110.40
25	122.20	25	114.20
26	126.00	26	118.00
27	129.80	27	121.80
28	133.60	28	125.60
29	137.40	29	129.40
30	141.20	30	133.20
31	145.00	31	137.00
32	148.80	32	140.80
33	152.60	33	144.60
34	156.40	34	148.40
35	160.20	35	152.20
36	164.00	36	156.00
37	167.80	37	159.80
38	171.60	38	163.60
39	175.40	39	167.40
40	179.20	40	171.20
41	183.00	41	175.00
42	186.80	42	178.80
43	190.60	43	182.60
44	194.40	44	186.40

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

NIGERIA.—EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service [1] [2]		On demand service [2]	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	35.90	2	27.90
3	40.80	3	32.80
4	45.70	4	37.70
5	50.60	5	42.60
6	55.50	6	47.50
7	60.40	7	52.40
8	65.30	8	57.30
9	70.20	9	62.20
10	75.10	10	67.10
11	80.00	11	72.00
12	84.90	12	76.90
13	89.80	13	81.80
14	94.70	14	86.70

NIGERIA.—EXPRESS MAIL INTERNATIONAL SERVICE—Continued

Custom designed service [1] [2]		On demand service [2]	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
15	99.60	15	91.60
16	104.50	16	96.50
17	109.40	17	101.40
18	114.30	18	106.30
19	119.20	19	111.20
20	124.10	20	116.10
21	129.00	21	121.00
22	133.90	22	125.90
23	138.80	23	130.80
24	143.70	24	135.70
25	148.60	25	140.60
26	153.50	26	145.50
27	158.40	27	150.40
28	163.30	28	155.30
29	168.20	29	160.20
30	173.10	30	165.10
31	178.00	31	170.00
32	182.90	32	174.90
33	187.80	33	179.80
34	192.70	34	184.70
35	197.60	35	189.60
36	202.50	36	194.50
37	207.40	37	199.40
38	212.30	38	204.30
39	217.20	39	209.20
40	222.10	40	214.10
41	227.00	41	219.00
42	231.90	42	223.90
43	236.80	43	228.80
44	241.70	44	233.70

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

OMAN.—EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service [1] [2]		On demand service [2]	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	35.90	2	27.90
3	40.80	3	32.80
4	45.70	4	37.70
5	50.60	5	42.60
6	55.50	6	47.50
7	60.40	7	52.40
8	65.30	8	57.30
9	70.20	9	62.20
10	75.10	10	67.10
11	80.00	11	72.00
12	84.90	12	76.90
13	89.80	13	81.80
14	94.70	14	86.70
15	99.60	15	91.60
16	104.50	16	96.50
17	109.40	17	101.40
18	114.30	18	106.30
19	119.20	19	111.20
20	124.10	20	116.10
21	129.00	21	121.00
22	133.90	22	125.90
23	138.80	23	130.80
24	143.70	24	135.70
25	148.60	25	140.60
26	153.50	26	145.50
27	158.40	27	150.40
28	163.30	28	155.30
29	168.20	29	160.20
30	173.10	30	165.10
31	178.00	31	170.00
32	182.90	32	174.90

OMAN.—EXPRESS MAIL INTERNATIONAL SERVICE—Continued

Custom designed service [1] [2]		On demand service [2]	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
33	187.80	33	179.80
34	192.70	34	184.70
35	197.60	35	189.60
36	202.50	36	194.50
37	207.40	37	199.40
38	212.30	38	204.30
39	217.20	39	209.20
40	222.10	40	214.10
41	227.00	41	219.00
42	231.90	42	223.90
43	236.80	43	228.80
44	241.70	44	233.70

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

Harold J. Hughes,

Deputy General Counsel.

[FR Doc. 86-13285 Filed 6-11-86; 8:45 am]

BILLING CODE 7710-12-M

Proposed Rules

Federal Register
Vol. 51, No. 113
Thursday, June 12, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870 and 873

Federal Employees' Group Life Insurance Program

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its Federal Employees' Group Life Insurance (FEGLI) regulations to make the FEGLI Program more responsive to the needs of employees and annuitants.

DATE: Comments must be received on or before August 11, 1986.

ADDRESS: Send comments to Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Agatha Gray, (202) 632-0003.

SUPPLEMENTARY INFORMATION: OPM proposes to make the following changes in Parts 870 and 873:

a. Paragraph 870.901(f) would be revised to eliminate the provision whereby a designation of beneficiary automatically cancels on the day the employee transfers (except by mass transfer) to another agency. Consequently, a designation of beneficiary for life insurance purposes will become invalid or cancelled only upon cancellation by the designator. The present cancellation provision was initially adopted many years ago when the legislative and judicial branches and some agencies in the executive branch did not use the Official Personnel Folder (OPF) for personnel record keeping. Upon transfer of an employee from an agency that used the OPF to an agency that did not (or vice versa), there was no way for the gaining agency to know whether the employee had a designation of beneficiary on file. Since the record keeping problem has been rectified by the adoption of the OPF system by virtually all Federal agencies and the issuance of administrative guidance, the automatic cancellation provision is obsolete and could obstruct the intentions of the designator. This is especially true because employees generally are unaware of the provision, and upon transferring may fail to file a new designation, thus increasing the possibility that a large amount of money may be paid contrary to the individual's expressed wishes. That is, if a transferring employee dies before completing a new designation, death benefits would be paid to the family members in accord with the order of precedence and not in accord with any designation filed before transferring. Removal of the obsolete regulation would preserve the validity of designations filed by employees until cancelled by subsequent designations.

b. Paragraph 873.204(b) would be revised to permit a cancellation of family optional insurance to become effective, upon the request of the employee and upon provision of proof satisfactory to the employing office that there was no longer any family member eligible for coverage, at the end of the pay period in which there ceased to be eligible family members. Presently, upon a death, termination of marriage or when children reach age 22 or marry, the deduction for optional family coverage continues and the cancellation does not become effective until the end of the pay period in which the declination or waiver is properly filed. This is true even though no benefits would have been paid had the ineligible family member died in the interim.

It is very common for an individual, upon experiencing the death of a family member or obtaining a divorce, to neglect to cancel family coverage in a timely manner. Also, employees often forget to cancel family coverage when the youngest child reaches age 22 or marries. A regulatory provision that ignores the trauma associated with the death of a family member or the termination of a marriage by requiring employees to file a timely cancellation of coverage increases the emotional anguish yet serves no useful administrative purpose. Moreover, to deny individuals a refund of premiums for life insurance coverage for which no benefit is payable is illogical. The proposed regulation to make the effective date of such cancellations retroactive and refunding any premiums withheld beyond the cancellation date would remove the present inequity.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees and annuitants.

List of Subjects

5 CFR Part 870

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 873

Administrative practice and procedure, Government employees, Life insurance, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Parts 870 and 873 as follows:

PART 870—BASIC LIFE INSURANCE

1. The authority citation for Part 870 continues to read as follows:

Authority: 5 U.S.C. 8716, unless otherwise noted.

2. In § 870.901, paragraph (f) is revised to read as follows:

§ 870.901 Designation of beneficiary.

* * * * *

(f) A designation of beneficiary is automatically canceled 31 days after the employee stops being insured.

* * * * *

PART 873—FAMILY OPTIONAL LIFE INSURANCE

3. The authority citation for Part 873 continues to read as follows:

Authority: 5 U.S.C. 8716, unless otherwise noted.

4. In § 873.204, paragraph (b) is revised to read as follows:

§ 873.204 Declination.

* * * * *

(b) A cancellation of family optional insurance becomes effective and family optional insurance stops at the end of the pay period in which the declination or waiver is properly filed, except that at the request of the employee or annuitant and upon proof satisfactory to the employing office that there was no family member eligible for coverage, the cancellation may be made effective at the end of the pay period in which there were no eligible family members.

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[FR Doc. 86-13313 Filed 6-11-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-86-7]

Summary of Rulemaking Petitions Received and Dispositions of Petitions Denied or Withdrawn; Correction

[Summary Notice No. PR-86-7]

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn; Correction.

SUMMARY: The issue of the Federal Register on May 21, 1986, in FR DOC. (18599) 86-11362, on page 18600 Docket No. 24824, Air Transport Association, under the heading "Description of the petition" revise the remainder of the sentence beginning with "Must Be Scheduled To Begin" to read as follows: "Must be Scheduled to Begin no later than 24 hours after the commencement of the reduced rest period but must begin no later than 28 hours after the commencement of the reduced rest period."

Issued in Washington, DC, on June 6, 1986.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 86-13224 Filed 6-11-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 60469-6069]

National Marine Sanctuary Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: These proposed regulations are designed to implement the provisions of the Marine Sanctuaries Amendments of 1984, Title I of Pub. L. 98-498 (16 U.S.C. 1431 *et seq.*) (the Act or the Amendments). While the Amendments build upon the foundation established in the existing Marine Sanctuary Program regulations (48 FR 24296 (1983)), revisions are necessary to reflect procedural and some policy changes of the Amendments.

DATES: Comments will be accepted until August 11, 1986. After the close of the comment period, and review of comments received, final regulations will be published in the **Federal Register.**

ADDRESS: Send comments to Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 3300 Whitehaven Street, NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster at (202) 673-5122.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice of proposed rulemaking is issued under the authority of Title III of the Marine Protection, Research and Sanctuaries Act, as amended in 1984, 16 U.S.C. 1431 *et seq.*

II. General Background

On October 19, 1984, President Reagan approved Pub. L. No. 98-498; Title I, referred to as the Marine Sanctuaries Amendments of 1984 (the Act or the Amendments), which authorizes appropriations through FY 1988 for, and makes revisions to, Title III of the Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431 *et seq.* The National Marine Sanctuary Program is administered by the Sanctuary Programs Division, National Oceanic and Atmospheric Administration, Department of Commerce. The Amendments set out the purposes and policies of the National Marine Sanctuary Program, establish specific criteria and procedures for designating and implementing National Marine Sanctuaries, and provide for greater participation by the Congress, the Regional Fishery Management Councils (established by the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*), and other affected agencies or persons. The designation standards set forth in the Amendments basically track the site identification and selection standards and active candidate criteria NOAA currently uses to identify potential Marine Sanctuaries and evaluate sites for designation. Thus, the Amendments modify the existing regulations in relatively minor ways. These modifications, and how they are reflected in the proposed regulations, are briefly discussed below.

A. Findings, Purposes, and Policies

The amendments add findings which recognize that certain areas of the marine environment possess "conservation, recreational, ecological, historical, research, educational or esthetic qualities which give them special national significance" (sec. 301(a)). This differs from the original Act which provided, in section 302(a), that National Marine Sanctuaries should be designated only for their "conservation, recreational, ecological, or esthetic qualities" (16 U.S.C. 1432(a)(1983)). To reflect the addition of historical qualities, NOAA's working list of potential sites is being amended (See III.A of the Preamble and Subpart B of the regulations). Consistent with the Amendment's Purposes and Policies, the National Marine Sanctuary Program provides for comprehensive management and conservation; the support and coordination of scientific research involving the resources of marine sanctuaries; stresses efforts to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and encourages public and private uses of such resources consistent with the Program's primary objective to protect them (sec. 301(b)(3)-(5)). These policies are reflected in the Program's mission and goals at § 922.1.

B. Designation Standards

The Secretary of Commerce may designate a discrete area of the "Marine Environment" as a National Marine Sanctuary, if he finds that:

(a) The area is of special national significance due to its resources or human-use values;

(b) Existing state and federal authorities are inadequate to ensure coordinated and comprehensive management of the area, including resource protection, scientific research and public education;

(c) Designation of the area as a National Marine Sanctuary will facilitate the objectives in subparagraph (b); and

(d) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(Sec. 303(a)).

These findings are reflected in the proposed regulations at § 922.33(a).

C. Consultation

In making the above findings, the Secretary must consult with the House Committee on Merchant Marine and Fisheries; the Senate Committee on Commerce, Science, and Transportation; the Secretaries of State, Defense, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, and the heads of other interested Federal agencies; the responsible officials or relevant heads of the appropriate state or local government entities, including the coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a National Marine Sanctuary; the appropriate officials of any Regional Fishery Management Councils established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by a proposed designation; and other interested persons. The consultation process for a potential designation is discussed in the proposed regulations at § 922.31.

Further, the Secretary of Commerce must prepare, as part of an environmental impact statement, a resource assessment report regarding the commercial and recreational uses in the area proposed for designation. The Secretary must consult with the Secretary of the Interior with respect to any uses in the area subject to the primary jurisdiction of the Department of the Interior (See sec. 303(b) (2) & (3)). The preparation of the resource assessment report is described in the regulations at § 922.31(f).

D. Fishery Regulations

Where fishery regulations are necessary, the Secretary must provide the appropriate Regional Fishery Management Council the opportunity to recommend draft sanctuary fishery regulations. Fishery regulations are discussed at § 922.31(d). The comment to this section of the regulations notes that President Reagan, in signing the Amendments, specified that the Councils will only make recommendations regarding the proposed regulations. The President states that the Secretary of Commerce, not the Councils, must make the final decision on regulatory actions (20 *Weekly Comp. Pres. Doc.* 1578 (October 19, 1984)).

E. Effectiveness of Designation

A proposed designation of a National Marine Sanctuary will become effective after the close of a review period of forty-five (45) days of continuous session of Congress, commencing with the publication of a notice of the designation and final implementing regulations in the **Federal Register**, unless:

(1) The designation or any of its terms is disapproved by enactment of a joint resolution of disapproval by Congress (sec. 304(b)(1)(A)); or

(2) In the case of a proposed sanctuary located partially or entirely within state boundaries, the Governor of the affected state objects to the designation or any of its terms (sec. 304(b)(1)(B)).

The regulations address the taking effect of designation at § 922.33(c).

F. Valid Rights

Leases, permits, and rights of subsistence use or access either in existence on October 19, 1984 (the date of enactment of Pub. L. No. 98–498) for then existing National Marine Sanctuaries, or in existence on the date new national marine sanctuaries are designated pursuant to the Amendments, may not be terminated by the Secretary, although such leases, permits or rights are subject to regulation by the Secretary "consistent with the purposes for which the sanctuary is designated" (sec. 304(c)). The regulations address this provision at § 922.1(g). The comment to that section notes that there were six (6) National Marine Sanctuaries in existence on the effective date of the Amendments: the MONITOR, Key Largo, Channel Islands, Point Reyes-Farallon Islands, Gray's Reef, and Looe Key.

G. Research and Education

The Amendments, at section 306, specify that the Secretary may conduct research and education programs to carry out the purposes of the Act. The regulations specifically discuss research and education at § 922.33(e).

III. Sanctuary Designation Process

The revisions contained in the Amendments, discussed above, make several modifications to the sanctuary designation process provided in the existing Program regulations. This section describes the revised designation process, which is depicted in Figure 1.

A. Site Evaluation List

To identify sites for future consideration as national marine sanctuaries, NOAA instituted a site evaluation process in 1982; this process culminated in a list of sites, the site evaluation list (SEL), which was published in 1983 (48 FR 35568). As established, the SEL consists of twenty-nine (29) natural resource sites. The SEL serves NOAA's working list for future marine sanctuary sites, and is discussed in subpart B of the regulations. The qualities expressed in the original Act were used in establishing the SEL; thus, the SEL was focused on sites of conservation, recreational, ecological, or esthetic qualities.

While the Amendments add historical, research, and educational qualities, sites possessing research and educational qualities were solicited and considered in the original SEL process. Research and educational qualities are inherent in sites possessing significant conservation, recreational, ecological, and esthetic values; consequently, sites possessing research and educational qualities of special national significance are included on the current SEL. Sites of nationally significant historical quality were not, however, considered in the SEL process; the evaluation teams did not include maritime archeologists or historians or any person schooled in submerged cultural resources. There are no historical sites on the SEL. Thus, the SEL will be amended to include discrete marine areas possessing nationally significant historical qualities for possible conservation and management as provided by the Act (See § 922.21 of the proposed regulations).

B. Designation of National Marine Sanctuaries

Selection of a site from the SEL as an active candidate represents the second phase in evaluating a site for potential designation; it begins the environmental impact statement process. Notice of selection as an active candidate and intent to prepare a draft environmental impact statement is placed in the **Federal Register**. At any time a site can be dropped from consideration if it is determined that a site does not meet the

standards and criteria as set forth in the Act.

After selection as an active candidate, a draft management plan (including necessary regulations) is prepared along with a draft environmental impact statement (DEIS). The DEIS evaluates the impacts of sanctuary designation and management plan implementation. During the preparation of the DEIS, a resource assessment report will be prepared documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. In consultation with the Secretary of the Interior, a resource assessment section should be prepared regarding any commercial or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior (sec. 303(b)(3)). After the DEIS and draft plan are published, a notice of proposed designation is published in the **Federal Register** and media serving communities which may be affected by the designation. On the same day that the **Federal Register** notice is issued, a detailed Congressional prospectus (which includes the draft EIS and the draft plan), as discussed in § 922.32(a), is sent to the House Merchant Marine and Fisheries Committee and the Senate Commerce, Science, and Transportation Committee for review for a forty-five (45) day period of continuous session.

After preparation of a final EIS and final management plan, including proposed final regulations, the Secretary of Commerce must determine whether to designate the area as a National Marine Sanctuary. Section 922.33(a) of the regulations sets forth the factors to consider in making this determination. Notice of designation is published in the **Federal Register.** The designation becomes effective after the close of a second Congressional review period (and Governor's review for sites including state waters) of forty-five (45) days of continuous session of Congress, dating from the **Federal Register** notice of designation (See § 922.33(c)). If the terms of the designation are found acceptable by Congress and Governor(s), for sites including any state waters, the Secretary will implement the management plan, including carrying out surveillance and enforcement activities, and conducting such research and education programs as necessary and reasonable to carry out the purposes and policies of the Act.

FIGURE 1.—SANCTUARY DESIGNATION PROCESS

Process stage site evaulation list (SEL) established	Action final SEL	Notice FEDERAL REGISTER notice
Proposed Designation/Selection as Active Candidate (Starts NEPA Process).	NOAA selects site from SEL as "Active Candidate"; notice of intent to prepare DEIS.	FR Notice Public Notice of selection.
	Consultations with Congress; affected Regional Fishery Management Councils, states, Federal agencies, and other interested persons.	
	Preparation of DEIS, Draft Management Plan, Proposed Regulations.	
	Prospectus to Congress (including Draft EIS and Draft Management Plan, proposed regulations) for review under Sec. 304(a) of the Act.	FR Notice (including proposed regulations and summary of Draft Management Plan) published concurrently with EPA notice of Draft EIS availability and transmission of Prospectus to Congress Public Notice.
	Public Hearing	
	Prepare Final EIS and Final Management Plan	
	Recommendation to Secretary for designation	Occurs within 3 years of selection as Active Candidate.
Designation	If site meets criteria, Secretary then designates marine sanctuary.	FR Notice (Designation, final regulations; availability fo Final EIS and Final Management Plan Notice to Congress (304(b)).
	After 45-day period for Congressional and Gubernatorial Review under Sec. 304(b) of the Act, Designation and final regulations become effective.	
	Implementation of Management Plan	

III. Other Actions Associated with the Notice of Proposed Rulemaking

(A) Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major "rules" within section 1(b) of Executive Order 12291 because they will *not* result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These proposed rules amend existing procedures by providing greater selectivity and specificity in initially identifying and designating potential National Marine Sanctuaries in accordance with the Marine Sanctuaries Amendments of 1984, 16 U.S.C. 1431–1439. These rules establish a revised process for identifying, designating and managing National Marine Sanctuaries. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts. They are intended to reduce delay and uncertainty in the site selection and approval process. All subsequent marine sanctuary designations and implementing regulations including any regulations recommended by the Fishery Management Councils will be reviewed for compliance with Executive Order 12291.

(B) Regulatory Flexibility Act Analysis

A Regulatory Flexibility Analysis is not required for this notice of proposed rulemaking. The regulations set forth procedures for identifying, selecting, and, if designated, managing National Marine Sanctuaries. Because the notice and comment requirements of Section 553 of Title 5 of the U.S. Code are not applicable to this proposed procedural rule (5 U.S.C. 553(b)(A)), the Regulatory Flexibility Act also does not apply (5 U.S.C. 603(a)). All subsequent marine sanctuary designations and implementing regulations will be reviewed for compliance with the Regulatory Flexibility Act.

(C) Paper Work Reduction Act of 1980 (Pub. L. 96–511)

These regulations will impose no information collection requirements of the type covered by Pub. L. 96–511.

(D) National Environmental Policy Act

NOAA has concluded that publication of these proposed rules does not

constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Environmental protection, Marine resources, Natural resources.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 6, 1986.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, it is proposed that 15 CFR Part 922 be revised as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM

Subpart A—General

Subpart B—Site Evaluation List (SEL)

Subpart C—Designation of National Marine Sanctuaries

Subpart D—Enforcement

Authority: Pub. L. 98–498, as amended (16 U.S.C. 1431–1439).

Subpart A—General

§ 922.1 Mission and goals.

(a) The mission of the National Marine Sanctuary Program (Program) is to identify, designate and manage as Naitonal Marine Sanctuaries discrete areas of the marine environment of special national significance due to their conservation, recreational, ecological, historical, research, educational, or esthetic qualities. Designated sanctuaries should be illustrative of the nation's marine areas and allow for coordinated and comprehensive management. Decisions to designate areas as National Marine Sanctuaries are based on an evaluation of the area's intrinsic natural or cultural resource and human-use values; the effects of present and future uses on these values and the effects of designation on these uses; the adequacy of existing state and federal management of the area; whether designation will ensure comprehensive management; the area's size and manageability; the fiscal capability to designate and operate any given area; and the public benefits to be derived from designation.

(b) The goals of the Program are to carry out this mission by designating national Marine Sanctuaries to:

(1) Enhance resource protection through comprehensive and coordinated conservation and mangement that complements existing regulatory authorities and is tailored to the specific resources;

(2) Support, promote and coordinate scientific research on, and monitoring of, the site-specific marine resources to improve management decisionmaking in national marine sanctuaries;

(3) Enhance public awareness, understanding, and wise use of the marine environment through educational and recreational programs; and

(4) Facilitate, to the extent compatible with the primary goal of resource protection, multiple use of these marine areas.

(c) In meeting the Program's mission and goals, particular attention will be paid to the establishment and management of sites for the protection of habitat values, particularly for economically important or threatened species or species assemblages.

(d) Consistent with the overall mission, the Program will coordinate its efforts to manage marine areas of special national significance with other countries managing marine protected areas.

(e) In carrying out the mission of the National Marine Sanctuary Program, priority will be given to offshore areas where there are no existing special area protection mechanisms.

(f) Sanctuary size, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure the sanctuary's effective management. Sanctuaries will be limited to relatively small, geographically discrete marine areas. NOAA intends that the maximum size will not exceed that of the largest existing marine sanctuary, the Channel Islands National Marine Sanctuary. The Channel Islands sanctuary is 1252 square nautical miles in size.

(*Comment*: Size considerations are specifically discussed in the Act. Section 303(a)(2)(D) provides that the Secretary, in deciding whether to designate an area as a National Marine Sanctuary, must find that "the area is of a size and nature that will permit comprehensive and coordinated conservation and management." In making this determination, the Secretary must consider, among other factors, the manageability of the area, its size and ability to be identified as a discrete ecological unit (Sec. 303(b)(1)(F). The criteria for active candidate selection explicitly include size considerations in § 922.30(b)(6)).

(g) Consistent with section 304(c) of the Act, leases, permits, licenses, or rights of subsistence use or access either (i) in existence on October 19, 1984 (the date of enactment of Pub. L. No. 98–498), with respect to existing designated National Marine Sanctuaries; or

(ii) In existence on the date of designation of any new National Marine Sanctuary designated after October 19, 1984, may not be terminated by the Secretary. The Secretary can, however, regulate such leases, permits, licenses, or rights consistent with the purposes for which the sanctuary was designated.

(*Comment*: Senate Report No. 280, 98th Cong. 1st Sess. 7 (1983), provides that the Secretary should "respect such leases, permits, licenses, right of subsistence use, or right of access, in recognition of the variety of uses within marine areas. The Secretary should use regulatory approaches that accommodate these uses, consistent with the purposes for which the Sanctuary is designated." With respect to subparagraph (i) above, at the time of the effective date of the Amendments (October 19, 1984) there were six (6) designated National Marine Sanctuaries: the Monitor, Key Largo, Channel Islands, Point Reyes-Farallon Island, Gray's Reef, and Looe Key).

§ 922.2 Definitions.

(a) "Act" means Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

(b) "Active Candidate" means a site selected by NOAA from the Site Evaluation List for further consideration leading to sanctuary designation.

(c) "Historical resources" means those areas of the marine environment possessing historical, cultural, archaeological, or paleontological significance (sec. 303(b)(1)(B)), including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events. An alternative or substitute term is cultural resources.

(d) "Marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law (*See* 16 U.S.C. 1432(3)).

(*Comment:* The term "marine environment" is intended to be consistent with the general marine jurisdiction of the United States and with international law. It specifies that the authority of the Secretary to designate marine sanctuaries and to regulate uses in the sanctuaries extends to the outer limit of the Fishery Conservation Zone (FCZ) for the purposes of the water column, and to 200 miles or to the outer limit of the Continental Shelf, whichever is further, for the purposes of the continental margin and seabed. Thus, it is a definition which covers both water and submerged land areas. First, the water areas to which the Act applies extend to the outer limit of the FCZ, as defined by section 101 of the Magnuson Fishery Conservation and Managment Act, 16 U.S.C. 1811. Secondly, the submerged land areas to which Title III applies include the lands beneath navigable waters described in section 2(a)(2) of the Submerged Lands Act of 1953 (43 U.S.C. 1301), the areas beneath the Great Lakes and their connecting waters, as well as the areas of the U.S. Outer Continental Shelf that extend beyond 200 miles (*See* H. Rep. 189, 96th Cong. 1st Sess. 19–20 (1983)).

(e) "National historic landmark" means a district, site, building, structure or object designated under the National Historic Landmarks (NHL) Program consistent with 36 CFR Part 65. The NHL Program is administered by the Department of the Interior.

(f) "National marine sanctuary" means an area of the marine environment, as defined above in paragraph (d) of this section, of special national significance due to its natural or cultural resource values, which is designated to ensure its conservation and management.

(g) "Person" means any private individual, partnership, corporation, or other entity; any officer, employee, agency, department, agency or instrumentality of the federal government; or any state, local or regional unit of government.

(h) "Regional fishery management council" means any fishery council established under section 302 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

(i) "Secretary" means the Secretary of the United States Department of Commerce.

(j) "Site Evaluation List" (SEL) means a list of selected natural and cultural resource sites qualifying for further evaluation as National Marine Sanctuaries.

(k) "State" means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States (*See* 16 U.S.C. 1432(5)).

(l) "Subsistence use" means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles; and for barter, if for food or nonedible items other than money if the exchange is of a limited and noncommercial nature.

§ 922.10 Effect of national marine sanctuary designation.

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

(a) Generally recognized principles of international law;

(b) An agreement between the United States and the foreign state of which the person is a citizen; or

(c) An agreement between the United States and the flag state of the foreign vessel, if the person is a crewmember of the vessel.

Subpart B—Site Evaluation List (SEL)

§ 922.20 Purpose of the Site Evaluation List.

(a) The first Site Evaluation List (SEL) was established in 1983 (*See* 48 FR 35568). The SEL consists of twenty-nine (29) highly-qualified natural resource sites identified and recommended to NOAA by regional resource evaluation teams in accordance with the Program's mission and goals and site identification and selection criteria.

(b) The SEL serves as NOAA's working list for future marine sanctuary sites; only sites on the SEL may be considered for subsequent review as active candidates for designation. Thus, the SEL provides a pool from which potential sanctuaries are considered.

(c) The SEL established in 1983 was based on the then existing Act which provided that national marine sanctuaries could be designated for their conservation, recreational, ecological, or esthetic values. The 1984 Amendments add additional qualities—historical, research, or education—which must also be considered when selecting sanctuary sites (sec. 301(a)(2)). Areas of nationally significant research and educational qualities were considered as part of the original site evaluation process. These qualities are inherent in sites possessing significant conservation, recreational, ecological, or esthetic values. Areas of significant research and educational qualities are represented on the present SEL. Therefore, areas of significant research and educational values will not be reconsidered at this time, except as provided in § 922.24. Sites possessing nationally significant historical or cultural resources were not specifically considered in the initial SEL; there are no historical sites on the SEL. Because the 1984 Amendments require the consideration of marine areas possessing historic values of special national significance, the existing SEL will be amended using revised identification and selection criteria, as discussed in § 922.21, to evaluate areas of the marine environment in light of their historical properties. As noted in § 922.2(c), historical resources include those of historical, cultural, archaeological, or paleontological significance.

§ 922.21 Site selection for sites with historical qualities of special national significance.

(a) To identify areas of the marine environment possessing historical and cultural resources of special national significance, the Sanctuary Programs Division will use the criteria found in Appendix 1 which are consistent with all existing Federal cultural resource legislation and regulations. The Sanctuary Programs Division will then establish a Marine Cultural Resource Evaluation Team and will direct and coordinate this team of experts in identifying sites of special national significance. Each proposed historical and cultural site will be evaluated against the selection criteria and guidelines. The sites selected as having historical qualities of special national significance shall also be eligible for nomination as a National Historic Landmark. The Team will submit a list of sites having historical qualities of special national significance as recommendations to NOAA for review.

(b) After a preliminary analysis of the historical sites, NOAA will publish a notice of availability of the historical sites proposed for listing of a supplemental in the **Federal Register.** These sites will be subject to a thrity-day comment period. At the conclusion of the comment period, NOAA will publish the final list of historical sites in the **Federal Register,** based on the selection criteria and the public comments. For each historical site added to the SEL, NOAA will prepare written documentation describing the values qualifying it for the SEL.

§ 922.22 Effect of placement on the SEL or selection as an active candidate.

Placement of sites on the SEL or selection as an Active Candidate does not subject such sites to any regulatory controls under federal law. Such regulations may only be established after designation, as provided under § 922.33.

§ 922.23 SEL time frame and consideration of new sites.

(a) As sites are designated as marine sanctuaries, or rejected from further consideration, they will be removed from the SEL. Rejected sites will not be replaced on the SEL. Sites remaining on the original SEL after December 31, 1988 (five (5) years from establishment) will be reevaluated. Sites added to the SEL under the historical resource process described in § 922.21 will be subject to a separate five year rview period beginning with the date of their addition to the list.

(b) If after the 5-year reevaluation (1988 for sites on the original SEL), it is determined that additional sites are necessary, notice of the initiation of a new site identification process will be published in the **Federal Register,** at least twelve (12) months in advance. NOAA will reevaluate the prior SEL process, including the team appraoch, and determine, after public comment, how best to modify that process, if necessary.

§ 922.24 Important new discoveries and new information.

Unless a new identification process is established as provided in § 922.23(b), the Secretary will consider future recommendations of potential sanctuary sites only if such sites are important new discoveries or if substantial new information previously unavailable establishes the national significance of a known site. The Secretary may determine, in consultation with other authorities, and after public review, whether such sites meet the selection criteria. Qualified sites will be added to the Site Evaluation List for further evaluation as National Marine Sanctuaries, consistent with the procedures set forth in these regulations.

Subpart C—Designation of National Marine Sanctuaries

§ 922.30 Selection of active candidates.

(a) Only a limited number of sites at one time will be selected from the SEL as active candidates and further evaluated for sanctuary designation.

(b) The Secretary will select sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards discussed in § 922.33(a), below.

(c) Selection of a site as an active candidate begins the formal sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement will be published in the **Federal Register** and in newspapers in the area(s) of local concern. A brief written analysis describing the site will be provided. At any time a site can be dropped from consideration if it is determined that the site does not meet the standards and criteria as set forth in the Act.

§ 922.31 Development of designation materials.

(a) After selecting a site as an Active Candidate, the Secretary shall prepare a draft designation document, including the terms of the designation, and draft management plan to implement the designation. The draft designation document shall be prepared in consultation with the House Merchant Marine and Fisheries Committee and the Senate Commerce, Science, and Transportation Committee; the Secretaries of State, Defense, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, and the heads of other interested federal agencies; the responsible officials or relevant agency heads of the appropriate state or local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary; the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) which may be affected by the proposed designation; and other interested persons.

(b) The terms of designation shall include the georgraphic area included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic values; and the types of activities that will be subject to regulation in order to protect those characteristics. The terms of the designation may be modified only by the same procedures through which the original designation was made. If regulations are promulgated, they shall be consistent with and implement the terms of the designation. Regulations relating to activities under the jurisdiction of one or more other federal agencies will be developed in consultation with these agencies. All amendments to these regulations must remain consistent with the original designation.

(c) (1) Management plans generally shall include sections on: goals and objectives, management rsponsibilities, resource studies and research, enforcement, including surveillance activities, interpretive and educational programs, and regulations (where applicable). A draft environmental impact statement (DEIS) will be prepared on the designation document/managment plan, including draft regulations if applicable. The DEIS will also include the resource assessment report, discussed in subsection (f), below, and maps depicting the boundaries of the proposed area, and the existing and potential uses and resources of the area.

(2) The management plan and the DEIS will be prepared as quickly as possible allowing for maximum public input. The time period between Active Candidate selection and recommendation of the site to the Secretary for designation is not to exceed three (3) years, unless it is determined that additional time is needed for public review.

(d) If regulations on fishery activities appear necessary to implement the sanctuary designation, the Secretary will consult with the appropriate Regional Fishery Management Council(s) in accordance with the following:

(1) Once the Secretary determines that regulations for fishing may be necessary within the proposed sanctuary, the Secretary shall provide the appropriate Council with the opportunity to recommend draft regulations to implement the proposed designation for specified fishery activities within the sanctuary and within the U.S. Fishery Conservation Zone. The Secretary should provide the Council with all necessary materials and information supporting the need for regulations;

(2) The Council shall have one hundred-twenty (120) days from the date of the Secretary's request to recommend draft fishery regulations and submit

these to the Secretary. In preparing these recommendations the Council shall use as guidance, the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed sanctuary designation.

(3) Draft regulations recommended by the Council, or its determination that regulations are not necessary, may be accepted by the Secretary. When making his/her determination whether to accept the Council's recommendation, the Secretary must consider whether the Council's action fulfills the purposes and policies of this Act and the goals and objectives of the proposed designation;

(4) The Secretary shall develop fishing regulations necessary to implement the Sanctuary designation, if the Council (a) declines to make a determination with respect to the need for regulations, (b) makes a determination which is rejected by the Secretary, or (c) fails to recommend the draft regulations within the period specified in subparagraph (2) above.

(5) Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations.

(*Comment:* In signing the Amendments, President Reagan noted that he had been advised by the Justice Department that the promulgation of regulations by persons, such as Council members, who are not appointed by the President would violate Article 2, Section 2 (the Appointments Clause of the U.S. Constitution. In light of this, the President signed the Amendments with the understanding that the Councils will only make recommendations regarding proposed regulations. The Secretary of Commerce, not the Councils, must make the final decision on the development and promulgation of fishing regulations for sanctuary management (20 *Weekly Comp. Pres. Doc.* 1578 (October 19, 1984)).

(e) Fishery activities not subject to any existing sanctuary regulation may be listed in the sanctuary designation document as potentially subject to regulation, without following the procedures specified in paragraph (d) of this section. If a decision is subsequently made that regulations on fishery activities are necessary, then the procedures specified in (d) must be followed.

(f) As part of the DEIS, the Secretary is to develop a resource assessment report documenting present and potential uses of the area, incuding commercial and recreational fishing, research and education, minerals and energy develpment, subsistence uses, and other commercial or recreational uses. In consultation with the Secretary of the Interior, the Secretary shall draft a resource assessment section for the report concerning any commercial or recreational resource uses in the area that are subject to the primary jurisdiction of the Department of the Interior.

(g) After the DEIS is prepared, the Secretary shall publish the draft designation document and a summary of the management plan including the proposed regulations, where applicable, in the **Federal Register.** The **Federal Register** notice shall be published concurrently with the Environmental Protection Agency (EPA) Notice of Availability of the DEIS.

(h) Notice of the proposal will be published in newspapers of general circulation or electronic media in the communities that may be affected by the proposal.

(i) No sooner than 30 days after publication of the notice under paragraph (g) of this section, the Secretary shall hold at least one public hearing in the coastal area or areas most affected by the proposed designation for the purpose of receiving views of any interested parties.

§ 922.32 Congressional findings.

(a) On the same day that the **Federal Register** notice in § 922.31(g) is issued, the Secretary shall submit to the House Committee on Merchant Marine and Fisheries and the Senate Commerce, Science, and Transportation Committee a prospectus on the proposal, consistent with section 304(a)(1)(C) of the Act, containing:

(1) The terms of the proposed designation (See § 922.31(b));

(2) The basis of the Secretarial designation findings discussed in § 922.33(a);

(3) Assessment of the factors used for Active Candidate determination in § 922.30(b);

(4) Proposed mechanisms to coordinate existing regulatory and management authorities within the area;

(5) The draft environmental impact statement and the draft management plan, including the proposed regulations, detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;

(6) An estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education; and

(7) An evaluation of the advantages of cooperative state and federal managment if all or part of a proposed marine sanctuary is within the territorial limits of any state or is superjacent to the subsoil and seabed within the seaward boundary of a state, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*).

(b) After receiving the prospectus discussed in paragraph (a) of this section, the House Committee on Merchant Marine and Fisheries and the Senate Commerce, Science, and Transportation Committee may each hold hearings on the proposed designation and the prospectus. Consistent with section 304(a)(6) and section 304(b)(4) of the Act, the Committees have a forty-five (45) day period of continuous session of Congress, beginning on the date of submittal of the prospectus, to complete their review.

(c) If either Committee, within the forty-five day period, issues a report concerning the prospectus, this report must be considered before the Secretary may designate the sanctuary.

§ 922.33 Designation and implementation.

(a) After the final EIS and final management plan, including final regulations, are prepared, the Secretary must evaluate the proposal in terms of the sanctuary designation standards in order to determine whether to designate an area of the marine environment as a National Marine Sanctuary. In a written decision document, the Secretary must:

(1) Determine that the designation fulfills the purposes and policies of the Act; and

(2) Find that:

(i) The area is of special national significance due to its resource or human-use values;

(ii) Existing state and federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(iii) Designation of the area as a national marine sanctuary will ensure comprehensive conservation and management, including resource protection, scientific research, and public education; and

(iv) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(3) Consider, in making the findings in paragraph (a)(2) of this section,

(i) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened

species or species assemblages, and the biogeographic representation of the site;

(ii) The area's historical, cultural, archaeological, or paleontological significance;

(iii) The present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(iv) The present and potential activities that may adversely affect the factors identified in subparagraphs (i), (ii) and (iii);

(v) The existing state and federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the Act;

(vi) The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(vii) The public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(viii) The negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development;

(ix) The socioeconomic effects of sanctuary designation; and

(x) The fiscal capability to designate and operate any given area.

(b) In designating an area as a National Marine Sanctuary, the Secretary shall publish notice of the designation and the implementing regulations in the **Federal Register**; this notice shall also advise the public of the availability of the financial management plan and the final EIS.

(c) The designation and regulations shall become final and take effect after the close of a review period of forty-five (45) days of continuous session of Congress, computed in accordance with section 304(b)(4) of the Act, beginning on the date of publication of the **Federal Register** notice in subsection (b) unless:

(1) The designation or any of its terms is disapproved by enactment of a joint resolution of disapproval consistent with section 304(b)(3) of the Act; or

(2) In the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any state, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the state.

(d) If the Secretary determines that the actions in subsection (c) affect the sanctuary designation in a manner that sanctuary goals and objectives cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not disapproved under paragraph (c)(1) or not certified under paragraph (c)(2) of this section shall take effect.

(e) After sanctuary designation, the Secretary shall implement the management plan, and applicable regulations, including carrying out surveillance and enforcement activities, and conducting such research and education as are necessary and reasonable to carry out the purposes and policies of the Act.

(f) Consistent with the sanctuary management plan, after a sanctuary is designated, the Sanctuary Programs Division will develop and implement a site-specific contingency and emergency-response plan designed to protect the sanctuary resources. The plan will contain alert procedures and actions to be taken in the event of an emergency (such as a shipwreck or an oil spill).

(g) After the designation becomes effective, and where essential to prevent immediate, serious and irreversible damage to the resources of the sanctuary, activities including those not listed in the designation, may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which time an appropriate amendment of the terms of the designation will be sought by the Secretary.

(h) Every five years, or sooner if necessary, designated sanctuaries will be evaluated as to substantive progress toward implementing the management plan and the goals of the sanctuary, especially on the effectiveness of on-the-ground management techniques. The evaluation will be conducted by NOAA sanctuary staff and other professional managers of marine protected areas, such as those from the National Park Service.

Subpart D—Enforcement

§ 922.40 Applicable procedures.

NOAA will apply to all enforcement matters under the Act the consolidated civil procedure regulations, set forth at 15 CFR Part 904, as amended on April 1, 1985 (50 FR 12781), and the seizure, forfeiture, and disposal procedure regulations set forth at 50 CFR Part 219.

Appendix 1—National Marine Sanctuary Program Site Identification and Selection Criteria for Sites With Historical Qualities of Special National Significance

Background

The Site Evaluation List (SEL) was established in 1983 (*See* 48 FR 35568). As established, the SEL consists of twenty nine (29) highly-qualified natural resource sites identified and recommended to NOAA by regional resource evaluation teams in accordance with the Program's mission and goals and then existent site identification and selection criteria.

The SEL serves as NOAA's working list for future marine sanctuary sites; only sites on the SEL may be considered for subsequent review as active candidates for designation. Thus, the SEL provides a pool from which potential sanctuaries are considered. After the SEL only if it is an important new discovery or if there is substantial information indicating that a known site merits such consideration as provided in § 922.24 of the regulations.

The SEL established in 1983 was based on the then existing Act which provided that national marine sanctuaries could be designated for their conservation, recreational, ecological, or esthetic values. The 1984 Amendments add additional qualities—historical, research, or education—which must also be considered when selecting sanctuary sites (sec. 301(a)(2)). Areas of nationally significant research and educational qualities were considered as part of the original site evaluation process. Such areas are represented on the present SEL. Areas of significant research and educational values will not be reconsidered at this time, except as provided in § 922.24 of the regulations. Sites possessing nationally significant historical or cultural resources were not specifically considered in the initial SEL; there are no historical sites on the SEL. Because the 1984 Amendments require the consideration of marine areas possessing historical values of special national significance, the existing SEL will be amended, as discussed in § 922.21 of the regulations, using revised identification and selection criteria, provided below, to evaluate areas of the marine environment possessing historical qualities of special national significance.

Site Selection for Sites of Historical Qualities of Special National Significance

To determine if an area possesses historical qualities of special national significance and otherwise meets the Sanctuary Designation standards specified in section 303, certain definitions and criteria are included in this appendix for use in evaluating potential sites for listing on the amended SEL.

Definitions

The term "historical qualities" means those areas of the marine environment possessing historical, cultural, archeological or paleontological significance. The term

"historical" is used in the broad sense to refer to both pre-historic and historic periods, to the anthropological concept of culture, and to the processes, events, places, and objects related to the human past. The phrase "special national significance" denotes those historic resources that possess unique national significance and are illustrative of the nation's maritime heritage.

Criteria for Identification and Selection

To qualify for listing on the SEL for historical qualities, a site must be determined to have special national significance and meet other programmatic requirements. The determination of special national significance shall include an evaluation of an area's unique national significance and an evaluation of its contribution to the historical resources already represented in the National Marine Sanctuary Program.

A. Determination of Significance

The National Historic Landmark (NHL) Program (36 CFR Part 65), administered by the Department of the Interior, focuses attention on properties of exceptional significance to the nation as a whole. It is the primary Federal means of evaluating the special national significance of historical and cultural resources. Properties designated as NHLs that are not already listed on the National Register of Historic Places are automatically listed. Additionally, the NHL Program is one of the major tools for identifying areas of potential international significance for nomination to the World Heritage List.

Consistent with the Amendment's Purposes and Policies that the management of special marine areas complement existing regulatory authorities, the criteria for nomination as a NHL will be used by NOAA as the first step in evaluating the historical, cultural, archeological or paleontological significance of a marine resource (*See* Table 1). Sites of unique national significance demonstrated by their designation as NHLs, or, considered by the Sanctuary Programs Division, in consultation with the Department of the Interior or other authorities, to meet NHL criteria, will be further evaluated for placement on the SEL, as discussed in B and C, below. Sites within the jurisdiction of the United States which have international significance as determined by the criteria for nomination to the World Heritage List also will be evaluated consistent with § 922.1(d) and § 922.10 (*See* Table 2).

New discoveries which are nominated as NHLs, or to the World Heritage List, may be evaluated for placement on the SEL consistent with the procedures set forth in § 922.24.

As general policy, the site selection and evaluation process for marine resources will be consistent with the establishment generic framework for the identification, evaluation, registration, and treatment of historical properties as described in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 716). It is specifically intended that the same regulatory protection and preservation planning philosophy extended to historical and cultural resources on land shall be extended to historical and cultural resources in the marine environment.

B. Determination of Representative Distribution

In addition to unique national significance as evaluated in A, above, a site must complement or contribute to the desired range of historical resources of the National Marine Sanctuary Program. Consistent with the Program's mission and goals specified in § 922.1, sanctuaries designated for historical qualities should be illustrative of the nation's maritime heritage and representative of the nation's most significant historical and cultural marine resources.

C. Additional Programmatic Requirements

In addition to special national significance as established under criteria A and B, above, to qualify for listing on the SEL the following programmatic requirements must be satisfied:

1. That the resource is of such special national significance that coordinated and comprehensive conservation and management of the area including: (a) Resource protection; (b) scientific research and monitoring; and (c) public education are required to derive maximum present and future public benefit from the resource.

2. That designation as a National Marine Sanctuary will complement existing regulatory authorities and will improve resource protection and preservation.

Table 1

National Historic Landmarks Program Selection Criteria

(36 CFR 65.4)

Specific Criteria of National Significance: The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering and culture and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or

(2) That are associated importantly with the lives of persons nationally significant in the history of the United States; or

(3) That represent some great idea or ideal of the American people; or

(4) That embody the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

(5) That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

(6) That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past 50 years are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

(1) A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or

(2) A building or structure removed from its original location but which is nationally significant primarily its architectural merit, or for association with person or events of transcendent importance in the nation's history and the association consequential; or

(3) A site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or

(4) A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or

(5) A cemetery that derives its primary national significance from graves if persons of transcendent importance, or from an exceptionally distinctive design or from an exceptionally significant event; or

(6) A reconstructed building or ensemble of buildings of extraordinary national significance when accurately exceuted in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or

(7) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or

(8) A property achieving national significance within the past 50 years if it is of extraordinary national importance.

Table 2

Criteria for Inclusion of Cultural Properties on the World Heritage List

(1) A monument, group of buildings or site which nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the World Heritage Convention when the World Heritage Committee finds that it meets one or more of the following criteria and the test of authenticity. Each property nominated should therefore:

(i) Represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or townplanning and landscaping; or

(iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. [The Committee considered that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria]; and

In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders; and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6650; File No. S7-13-86]

Form D and Regulation D; Registration Requirements; Limited Offers and Sales

AGENCY: Securities and Exchange Commission.

ACTION: Publish for comment the proposed revisions to Form D and the corresponding revisions to Regulation D.

SUMMARY: The Commission with the cooperation of the North American Securities Administrators Association is publishing for comment proposed revisions to Form D designed to make the Form a uniform notification form that can be filed with the Commission and with the states. Other revisions being proposed would revise or eliminate certain item requirements of the Form and would delete the provision requiring the Form to be updated every six months until the offering is completed. Corresponding revisions to Regulation D are also being proposed. Further, the Commission is seeking comments from the public about the appropriateness of eliminating the requirement for a final filing of the Form D upon completion of the offering.

DATE: Comments must be received on or before July 18, 1986.

ADDRESSES: All communications on this matter should be submitted in triplicate to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-13-86 and will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Karen O'Brien, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission with the cooperation of the North American Securities Administrators Association, Inc. ("NASAA")[1] is proposing for comment revisions to Form D and the description of Form D (17 CFR 239.500), the notification Form required to be filed by issuers relying on the exemptions from the registration provisions of the Securities Act of 1933 (the "Securities Act")[2] provided by Regulation D [17 CFR 230.501-506] thereunder and Section 4(6) of the Securities Act.

The effect of the proposed revision will be (1) to structure the Form so that it will be a uniform notification form which can be filed with the Commission and, to the extent provided by individual state laws, with the states when certain exempt offerings are being made; (2) to eliminate the requirement to furnish certain information about the issuer and to revise other items of the Form; and (3) to remove the requirement to file periodic updates of the Form every six months so that the Form need be filed only fifteen days after the first sale and thirty days after the last sale of securities offered in reliance upon the specified exemptions. The Commission also is proposing conforming revisions to Rule 503(a) of Regulation D to delete the requirement for a six-month update.

Finally, the Commission is considering and therefore specifically requests comments from the public about the elimination of the filing of the final notice, currently required thirty days after the last sale.

I. Proposed Revisions to Form D

Regulation D, which was adopted by the Commission in 1982,[3] resulted from a cooperative effort by NASAA and the Commission to adopt a regulation which would provide the framework for a limited offering exemption that would apply uniformly at the federal and state level. Form D was adopted as part of Regulation D. NASAA formally adopted ULOE as an official policy guideline[4] in September 1983. Since that time, more than half of the states have adopted ULOE or an exemption substantially similar to ULOE. The Commission and NASAA are continuing to work together to encourage the remaining states to adopt ULOE.

The proposal to structure Form D as a uniform federal/state notification form is intended to further encourage states to adopt ULOE. The proposed Form, which was developed by the Commission with the cooperation of the Small Business Finance Committee of NASAA, provides special instructions for the federal filing and the state filing, includes an appendix so that information can be furnished for the specific items on a state-by-state basis, and provides a federal and state signature page. Thus, if the proposed Form is adopted by the Commission and by the states, an issuer could fill out and sign one Form and then make the appropriate number of copies for filing with both the Commission and the states.

At the time Form D was proposed, the Commission stated that one of the purposes of the notice was to collect empirical data as a basis for further action by the Commission either in terms of amending existing rules and regulations or proposing new ones. Another purpose of the Form was to elicit information necessary in assessing the effectiveness of Regulation D as a capital raising device for small businesses.[5] Relying on the data

[1] NASAA is an association of securities commissioners from each of the 50 States, the District of Columbia, Puerto Rico and several of the Canadian provinces.

[2] 15 U.S.C. 77a *et seq.*

[3] See Release No. 33-6389 (March 8, 1982) [47 FR 11251] in which the Commission adopted Form D to replace old Forms 4(6), 146, 240 and 242 as part of its effort to simplify and clarify the then existing exemptions from the registration provisions of the Securities Act, to expand their availability, and to achieve uniformity between Federal and state exemptions in order to facilitate capital formation consistent with the protection of investors.

[4] 1 CCH Blue Sky Rep. Section 5294, at 1273 through 1273-5.

[5] See Release No. 33-6339 (August 18, 1981) [46 FR 41791].

collected on Form D, the Commission's Directorate of Economic and Policy Analysis ("DEPA") completed a study of the general operation of Regulation D in its first year which indicated that the exemptions provided by the Regulation were a significant capital raising device, costing substantially less than comparable registered offerings.[6]

At the time Form D was proposed, the Commission also indicated that, after a reasonable period of experience with Regulation D, it would review the nature and amount of information required in the notification Form.[7] The Commission has determined that the items requiring information about the issuer (i.e., gross revenues, total assets and number of shareholders) may be eliminated. Although this information was used to some extent in the DEPA study referred to above, the Commission does not believe that it is necessary to continue to require issuers to furnish the data.

The Commission is also proposing amendments to the items which require the furnishing of information about the use of proceeds and the expenses of the offering. The proposed revisions essentially parallel the disclosure currently required in the use of proceeds segment for Form SR[8] and the information concerning expenses of an offering required by Item 504 of Regulation S–K.[9] These proposed revisions will simplify the information required by Form D.

In addition, the proposed revisions would require the issuer to identify only its executive officers, directors, general partners, promoters and persons who own beneficially 10% or more of a class of equity securities, rather than requiring the identity of all affiliates. The Commission does not believe that the identity of affiliates other than those specified above is of sufficient importance to require issuers to continue furnishing this information which in some cases has been extensive.

A state signature page would be added to the Form and would require information particularly useful to and desired by the states. This information would include an indication of whether any persons participating in the offering are disqualified pursuant to either the federal or state disqualification provisions; an undertaking to file the Form D as required by state law and to furnish the state administrator, upon request, copies of information furnished to offerees; and a representation that the issuer is familiar with the conditions that must be satisfied in order to comply with ULOE.

The proposed form includes an appendix to furnish the information required by certain of the items on a state by state basis. Other minor clarifying and conforming changes are being proposed.

As a result of discussions with representatives of the NASAA Small Business Finance Committee, the specific state elements to the proposed Form D where developed. In addition, the collection of information about the offering sought by Items B2 and 3 of the Form concerning non-accredited investors and minimum purchase requirements and in Item C3 about finders fees was suggested by representatives of that NASAA Committee.

II. Proposed Revisions to Form D and Regulation D to Eliminate Certain Periodic Updating Requirements

To ease the burdern on small issuers, the Commission proposes to revise the Instructions to Form D and Rule 503(a) of Regulation D to eliminate the requirement that periodic reports be filed every six months until the completion of the offering. An initial notice would still be required to be filed with the Commission within 15 days of the first sale of securities in an offering under Regulation D or section 4(6) and within 30 days of the final sale. Issuers, however, would still have to ascertain the filing requirements of each state in which the Form would be used.

The Commission also is considering and therefore requests specific comments about the elimination of the final filing currently required within 30 days of the final sale. The Commission requests comments as to investors' need for the information provided in the final report, and as to the costs of preparing and filing the final report. The Commission also requests comments as to whether the proposed changes in the federal filing requirement will significantly reduce costs notwithstanding different state filing requirements.

III. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the modifications to Form D and Rule 503(a) of Regulation D. The analysis notes that these proposals are intended to further encourage states which have not yet done so to adopt ULOE. A uniform notification Form providing special instructions for the federal filing and the state filing, including an appendix so that information can be furnished for the specific items on a state-by-state basis and providing for separate federal and state signature pages should help to achieve this end thereby decreasing the filing burden on issuers.

The proposed amendments would not impose any new reporting, recordkeeping, or other compliance requirements on issuers. In fact, the proposed amendments would eliminate certain information currently provided by the issuer and the requirement that periodic reports be filed every six months until the completion of the offering.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Richard Wulff or Karen O'Brien, Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

IV. Cost-Benefit Analysis

In order to fully evaluate the benefits and costs associated with the revisions to Form D and the removal of the requirement to file periodic updates to the Form, the Commission requests commentators to provide views and data as to the costs and benefits associated with these proposals. In this regard, the Commission believes that the proposals will work significant costs savings for issuers because they will (1) eliminate certain information presently required to be provided; (2) reduce the updating requirements for the Form so that only an initial (and, possibly the final Form D) would be required to be filed; and (3) permit issuers to use the revised Form for both federal and state purposes. Of the 27,177 Forms D filed in 1985, 2,651 (nearly 10%) were six month updates. In addition, 7,414 of the Form D filings in 1985 were finals (over 27%), which the Commission is also considering eliminating.

Because the proposal envisions less paperwork, filing responsibility and information gathering, it appears that costs would be lower than under the current system. By the same token, there would not appear to be any significant negative impact upon the protection of investors if these proposals are adopted.

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[6] *An Analysis of Regulation D.* U.S. Securities and Exchange Commission (May 1984).

[7] See Release No. 33–6339 (August 18, 1981) [46 FR 41791].

[8] 17 CFR 239.61.

[9] 17 CFR 229.504.

Consequently the benefits that result from the filing of Forms D should continue.

V. Statutory Basis, Text of Proposed Amendments and Authority

The amendments to the Commission's Forms and rules are being proposed pursuant to section 3(b), 4(2), 19(a) and 19(c)(3) of the Securities Act of 1933.

List of Subjects in 17 CFR Parts 230 and 239.

Reporting and recordkeeping requirements, Securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s.

2. Section 230.503 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(3) as (a)(2), and revising paragraph (f)(2) as follows:

§ 230.503 Filing of notice of sales.

* * * * *

(f) * * *

(2) As of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's principal office in Washington, DC, if the notice is delivered to such office after the date on which it is required to be filed.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for Part 239 continues to read as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, et seq.

4. By revising Form D described in § 239.500 as follows. (**Note:** Form D does not appear in the Code of Federal Regulations).

By the Commission.

Shirley E. Hollis,

Acting Secretary.

June 5, 1986.

BILLING CODE 8010-01-M

FORM D

OMB APPROVAL	
OMB Number:	3235-0076
Expires:	January 31, 1988

SEC USE ONLY

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SEC USE ONLY	
	SERIAL
21-	-

NOTICE OF SALES OF SECURITIES PURSUANT TO REGULATION D OR SECTION 4(6) AND UNIFORM LIMITED OFFERING EXEMPTION

Instruction: Check the box(es) corresponding to the exemptive provisions applicable to this offering.

Rule 504 ☐ Rule 505 ☐ Rule 506 ☐ Section 4(6) ☐ ULOE ☐

Instructions: Enter "N" for a new filing or "A" for an amended filing ☐. Enter "1" for ORIGINAL, "2" for COMBINED ORIGINAL AND FINAL, or "3" for FINAL filing ☐.

Instructions: FEDERAL: The issuer shall file with the U.S. Securities and Exchange Commission (SEC) in Washington, D.C., *five copies* of this notice at the following times: (a) no later than 15 days after the firsf sale of securities in an offering under Regulation D or Section 4(6); and (b) no later than 30 days after the last sale of securities in an offering under Regulation D or Section 4(6), except that if the offering is completed within the 15-day period described in "(a)" above, and if the notice is filed not later than the end of that period but after the completion of the offering, then only one notice need be filed. If more than one notice for an offering is required to be filed, notices after the first notice need only report the issuer's name, reference to the original name if the issuer's name has changed, information in response to Part C and any material changes from the facts previously reported in Parts A and B. This notice shall be deemed to be filed with the SEC for purposes of the rule as of the date on which the notice is received by the SEC or, if delivered to the SEC after the date on which it is due, as of the date on which it is mailed by means of United States registered or certified mail to the U.S. Securities and Exchange Commission, 450 5th Street, N.W., Washington DC 20549. There is no federal filing fee. Part E and the Appendix need not be filed with the SEC.

STATE: This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been, made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The appendix to the notice constitutes a part of this notice and must be completed.

ATTENTION

Failure to file notice in the appropriate states will not result in a loss of the Federal exemption. Conversely, failure to file the appropriate Federal notice will not result in a loss of an available state exemption unless such exemption is predicated on the filing of a Federal notice.

SEC 1972 (6-86)

A. Basic identification of issuer, and sponsor if applicable. Name offering will be known as _____

1. *Instruction:* State the address of the issuer's executive offices and, if different, the address at which the issuer's principal business operations are conducted or proposed to be conducted.

NAME		
ADDRESS OF EXECUTIVE OFFICES		
CITY	STATE	ZIP
AREA CODE TELEPHONE NUMBER		
ADDRESS OF PRINCIPAL BUSINESS OPERATIONS		
CITY	STATE	ZIP
AREA CODE TELEPHONE NUMBER		

2. *Instruction:* List the full name and address of the following persons: each promoter of the issuer involved in the offering of securities as to which sales pursuant to Regulation D, Section 4(6) or ULOE are reported on this notice, beneficial owners having the power to vote or direct the vote of 10% or more of a class of equity securities in the issuer and/or the power to dispose or direct the disposition of such securities, the executive officers and directors of corporate issuers and of corporate general partners of limited partnership issuers and the general partners of limited partnership issuers. Indicate the status of each person named by placing an "X" in the applicable box(es) opposite such person's name.

NAME LAST	FIRST			
ADDRESS	CITY	STATE	ZIP	
NAME LAST	FIRST			
ADDRESS	CITY	STATE	ZIP	

EO	GP	PRO	DIR	BEN O

EO	GP	PRO	DIR	BEN O

(Use additional sheets as necessary)

3. Briefly describe the issuer's business.

_____

_____

_____

4. Indicate the issuer's type of business organization.

☐ a. corporation ☐ c. business trust ☐ e. other, please specify _____
☐ b. limited partnership ☐ d. limited partnership to be formed

5. Date the issuer incorporated or organized or is to be formed. _____

6. Indicate the state in which the issuer is or will be incorporated or organized. Enter the standard two letter U.S. Postal Service abbreviation. Enter "CN" if the issuer is incorporated or organized in Canada; "FN" if the issuer is incorporated or organized in another foreign jurisdiction. _____

B. Information About the Offering

1. If this offering is being made pursuant to Rule 504 or 505, report by exemption and type of security (i.e., debt, equity, convertible, limited partnership interest) the dollar amount of all Section 3(b) sales of securities (other than sales reported in Item C.2 below) occurring from twelve (12) months prior to the first sale of securities in this offering to date.

	Type of Security (A)	Dollar Amount (B)
Rule 505	_____	$ _____
Regulation A	_____	$ _____
Rule 504	_____	$ _____
Total		$ _____

2. Does the issuer intend to sell to non-accredited investors in this offering? Yes ☐ No ☐

See appendix column 2 for state response

3. a. Minimum purchase price per investor in this offering. _____

b. Does the offering permit joint ownership of a single unit? Yes ☐ No ☐

4. List the full name and address of each person who has been or will be paid or given directly or indirectly any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in this offering pursuant to Regulation D, Section 4(6) or ULOE. If a person to be listed is an associated person or agent of a broker or dealer registered with the SEC and/or with a state or states, then also list the name of that broker or dealer. If more than five (5) persons to be listed are associated persons of a broker or dealer registered with the SEC and/or a state or states, then the issuer may list the name and address of only such broker or dealer. Also list, using the standard two-letter Postal Service abbreviation, the state or states in which each person, or if an associated broker or dealer is listed, each such broker or dealer, intends to or is offering securities in this offering; if all states enter "all."

NAME OF AGENT(S)	LAST	FIRST		
ADDRESS		CITY	STATE	ZIP
NAME OF ASSOCIATED BROKER OR DEALER				
STATES				
NAME OF AGENT(S)	LAST	FIRST		
ADDRESS		CITY	STATE	ZIP
NAME OF ASSOCIATED BROKER OR DEALER				
STATES				

C. Sales Limit, Number of Investors, Expenses and Use of Proceeds

Instruction: If a response to any item is "none" or "zero," please enter zero ("0") in the corresponding space. If the transaction involved is an exchange offering, place an "X" in the following box and indicate the value of the securities exchanged in C.1. ☐

1. Type and aggregate offering price of securities intended to be sold or actually sold in this offering.

	Amount Intended To Be Sold	Amount Sold
a. Debt	$ _____	$ _____
b. Equity	$ _____	$ _____
Common ☐ Preferred ☐		
c. Convertible (including warrants)	$ _____	$ _____
d. Limited Partnership Interests	$ _____	$ _____
e. Other (specify)	$ _____	$ _____
Total	$ _____	$ _____

See appendix column 3 for state response.

2. Number of accredited and non-accredited investors who have purchased securities in this offering and aggregate dollar amounts of their purchases. For sales in reliance on Rule 504, enter the number of persons who have purchased securities and aggregate dollar amounts of their purchases on the total lines.

	Number of Investors (A)	Aggregate Dollar Amount (B)
Accredited Investors	_____	$ _____
Non-Accredited Investors	_____	$ _____
Total	_____	$ _____

See appendix column 4 for state response.

3. a. Furnish a statement of all expenses in connection with the issuance and distribution of the securities being offered in this offering. Exclude any amounts relating solely to the organizational expenses of the issuer. Insofar as practicable, give amounts for the categories listed below. The information may be given as subject to future contingencies. If the expenditure in any category is not known, furnish an estimate and place an "X" in the box to the left of the amount given.

i. Transfer Agents' Fees	☐	_____
ii. Printing and Engraving Costs	☐	_____
iii. Legal Fees	☐	_____
iv. Accounting Fees	☐	_____
v. Engineering Fees	☐	_____
vi. Sales Commissions *(specify Finders' Fees separately)*	☐	_____
vii. Other Expenses *(identify)*	☐	_____
_____		_____
_____		_____
Total	☐	$ _____

b. Enter the difference between the total offering price in C.1. and the total costs in C.3.a. This difference is the "adjusted gross proceeds to the issuer." ☐ $ _____

4. Indicate below the amount of the adjusted gross proceeds to the issuer used or proposed to be used for each of the purposes below. If the amount to be used for any purpose is not known, furnish an estimate and place an "X" in the box to the left of the amount given. The total proceeds must equal the adjusted gross proceeds to the issuer in C.3.b. above.

	Payments to officers directors and affiliates (A)	Payments to others (B)
a. Salaries and fees	☐ $ _____	☐ $ _____
b. Purchase of real estate	☐ _____	☐ _____

c. Purchase, rental or leasing and installation of machinery and equipment ☐ _____ ☐ _____

d. Construction or leasing of plant building and facilities ☐ _____ ☐ _____

e. Acquisition of other businesses (including the value of securities involved in this offering which may be used in exchange for the assets or securities of another issuer pursuant to a merger) ☐ _____ ☐ _____

f. Repayment of indebtedness ☐ _____ ☐ _____

g. Working capital ☐ _____ ☐ _____

h. Other - *(specify)* _____ ☐ _____ ☐ _____

i. _____ ☐ _____ ☐ _____

j. _____ ☐ _____ ☐ _____

Total ☐ $ _____ ☐ $ _____

D. Federal Signatures

1. Undertakings by issuers filing pursuant to Rule 505.

The undersigned issuer hereby undertakes to furnish to the Securities and Exchange Commission, upon written request of its staff, the information furnished by the issuer to any non-accredited investor pursuant to paragraph (b)(2) of Rule 502.

Issuer _____

Signature _____

Name _____

Title _____

2. The issuer has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

DATE OF NOTICE:

_____

Issuer _____

Signature _____

Name _____

Title _____

Instruction: Print the name and title of the signing representative under his signature for the federal portion of this form. One copy of every notice on Form D must be manually signed. Any copies not manually signed must bear typed or printed signatures.

ATTENTION

Intentional misstatements or omissions of fact constitute Federal Criminal Violations (See 18 U.S.C. 1001).

E. State Signatures

1. Is any party described in 17 CFR §230.252 (c), (d), (e) or (f) presently subject to any of the disqualification provisions of such rule? Yes ☐ No ☐

See appendix column 5 for state response.

2. The undersigned issuer hereby undertakes to furnish to any state administrator of any state in which this notice is filed, a notice on Form D (17 CFR 239.500) at such times as required by state law.

3. The undersigned issuer hereby undertakes to furnish to the state administrators, upon written request, information furnished by the issuer to offerees.

4. The undersigned issuer represents that the issuer is familiar with the conditions that must be satisfied to be entitled to the Uniform Limited Offering Exemption (ULOE) of the state in which this notice is filed and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied.

The issuer has read this notification and knows the contents to be true and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

DATE OF NOTICE:

_____

Issuer _____

Signature _____

Name _____

Title _____

Instruction: Print the name and title of the signing representative under his signature for the state portion of this form. One copy of every notice on Form D must be manually signed. Any copies not manually signed must bear typed or printed signatures.

Form D
CONTINUATION SHEET

Item of Form	Answer

APPENDIX

1	2		3	4		5	
	Intend to sell to non-accredited investors in State (Item B.2)		Type of security and aggregate offering price offered in State (Item C.1)	Type of investor and amount purchased in State (Item C.2)		Disqualification under State ULOE (if yes, attach explanation of waiver granted (Item E.1)	
STATE	YES	NO		YES	NO	YES	NO
AL							
AK							
AZ							
AR							
CA							
CO							
CT							
DE							
DC							
FL							
GA							
HI							
ID							
IL							
IN							
IA							
KS							
KY							
LA							
ME							
MD							
MA							
MI							
MN							
MS							

APPENDIX

1	2		3	4		5	
	Intend to sell to non-accredited investors in State (Item B.2)		Type of security and aggregate offering price offered in State (Item C.1)	Type of investor and amount purchased in State (Item C.2)		Disqualification under State ULOE (if yes, attach explanation of waiver granted (Item E.1)	
STATE	YES	NO		YES	NO	YES	NO
MO							
MT							
NE							
NV							
NH							
NJ							
NM							
NY							
NC							
ND							
OH							
OK							
OR							
PA							
RI							
SC							
SD							
TN							
TX							
UT							
VT							
VA							
WV							
WI							
WY							

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[FR Doc. 86-13305 Filed 6-11-86; 8:45 am]
BILLING CODE 8010-01-C

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Proposed rules and request for comments.

SUMMARY: The Parole Commission proposes to make a number of interpretive clarifications, revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20 and 2.36. These changes and additions are intended to remove ambiguities, to conform to other parts in the guidelines, and to make the guidelines more comprehensive.

DATE: Public comment must be received by July 14, 1986.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION: The proposed revisions to 28 CFR 2.20 and 2.36 fall into three categories: (a) Revision of an offense example in the Offense Severity Index of § 2.20 and revision of the rescission guidelines in § 2.36, both to clarify and make the guidelines more comprehensive; (b) revision to the notes accompanying one chapter of the Offense Severity Index of § 2.20 by incorporating, as part of the rules, instructional material previously included in the Commission's internal Rules and Procedures Manual; and (c) a request for public comment on the desirability for, and the potential content of, an offense example to become part of the Offense Severity Index of § 2.20.

(a) First, Offense Example 212 in Chapter 2, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 contains gradings for various assault offenses, including assaults on law enforcement, judicial or correctional officials. To clarify this offense example, a new grading level is proposed to cover assaults committed while resisting arrest or detention. Next, there is a proposed addition to the Notes accompanying the Rescission Guidelines of 28 CFR 2.36. Previously, the Parole Commission revised these guidelines by establishing, as Category Three, the offense severity for possession of a weapon other than a firearm or explosive in a prison facility or a Community Treatment Center. The proposed revision would grade possession of a firearm or explosive in a prison facility or a Community Treatment Center as Category Five.

(b) Chapter 9 of the Offense Behavior Severity Index of 28 CFR 2.20 contains several subchapters and notes regarding the grading of offenses involving illicit drugs. For heroin, opiate and cocaine offenses, offense severity grading is derived from weight and purity figures. To make the guidelines more comprehensive, the Commission proposes to incorporate, as part of the rules, instructional material previously included in the Commission's internal Rules and Procedures Manual that provides the grading levels where drug weight, but not purity, is available.

(c) 21 U.S.C. 845(a) contains penalties for offenders who distribute controlled substances "in or on, or within one-thousand feet of, the real property comprising a public or private elementary school. . . ." Such penalties can be up to twice that authorized by 21 U.S.C. 841(b) and "at least twice any special parole term" so authorized; the penalties for second offenders include a three year minimum sentence, a prohibition against sentence suspension and/or probation, and a requirement for the service of the minimum sentence before parole eligibility. The Parole Commission proposes to add an offense example covering this behavior to the Offense Behavior Severity Index of 2.20 and requests public comment on the need for and the potential content of such an offense example.

These proposed rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. It is proposed to amend Offense Example 212 in Chapter 2, subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 by designating the current text of paragraph (d) as (d)(1) and adding a new paragraph (d)(2) to read as follows:

212 *Assault*

(a) * * *

(d) *Exception: (1) * * * (2) If an assault is committed while resisting an arrest or detention initiated by a law enforcement officer or a civilian acting under color of law, grade conduct under (a) as Category Seven, (b) as Category Six, and (c) as Category Three.*

3. It is proposed to amend the Notes to Chapter Nine of the Offense Behavior Severity Index of 28 CFR 2.20 by adding a new item to read as follows:

Chapter Nine—Offenses Involving Illicit Drugs

* * * * *

Notes to Chapter Nine:

* * * * *

(4) If weight, but not purity is available, the following grading may be used:

Heroin

Extremely large scale—6 kilograms or more
Very large scale—2–5.99 kilograms
Large scale—200 gms.–1.99 kilograms
Medium scale—28.35–199.99 gms.
Small scale—Less than 28.35 gms.

Cocaine

Extremely large scale—18.75 kilograms or more
Very large scale—6.25–18.74 kilograms
Large scale—1.25–6.24 kilograms
Medium scale—200 gms.–1.24 kilograms
Small scale—20 gms.–199.99 gms.
Very small scale—4 gms.–19.99 gms.
Extremely small scale—Less than 4 gms.

4. It is proposed to revise the Note that accompanies section (a)(2)(ii) of the Rescission Guidelines in 28 CFR 2.36 to read as follows:

§ 2.36 Rescission Guidelines.

(a) * * *

(2) * * *

(ii) * * *

Note: Grade unlawful possession of a firearm or explosives in a prison facility or Community Treatment Center as Category Five. Grade unlawful possession of a dangerous weapon other than a firearm or explosives (e.g., a knife), in a prison facility or community treatment center as Category Three.

Dated: May 28, 1986.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 86–13146 Filed 6–11–86; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 140, 143, and 149

46 CFR Parts 107, 108, and 109

[CGD 79-059]

Offshore Cranes; Performance and Operating Standards on Outer Continental Shelf and Mobile Offshore Drilling Units

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice extends the comment period on the notice of proposed rulemaking concerning offshore crane performance and operating standards on Outer Continental Shelf (OSC) facilities, on deepwater ports, and on mobile offshore drilling units (MODUs). The extension was formally requested by the International Association of Drilling Contractors (IADC), one of the largest offshore industry associations in the country. The IADC requested a sixty (60) day extension, citing current travel restrictions and personnel changes within the offshore industry in response to recent economic developments having significant impact upon offshore petroleum exploration and production activities. The organization indicated that these developments have created substantial difficulties in assembling adequate numbers of qualified personnel to perform a thorough industry analysis of the proposed rule, within the time period prescribed in the original proposed rule. Because the Coast Guard recognizes the severity of recent economic developments within the industry, and because this impact is further reflected in the relatively low number of responses received to date, the Coast Guard believes that the quality of the final rule will be enhanced by extending the public comment period. Therefore, the deadline for receipt of comments is extended to August 15, 1986.

DATE: The comment period on the notice of proposed rulemaking is extended to August 15, 1986.

ADDRESSES: Comments should be mailed to the Commandant (G-CMC/21) (CGD 79-059), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593. Between the hours of 7:30 a.m. and 3:30 p.m. Monday through Friday except holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, (202) 426-1477.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Reid, Office of Merchant Marine Safety, G-MTH-4, (202) 426-2197.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking was published on February 14, 1986, in the **Federal Register** (51 FR 5547).

J.W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Merchant Marine Safety.

June 9, 1986.

[FR Doc. 86-13280 Filed 6-11-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CCGD7-86-06]

Safety Zone Regulations; Tampa Bay and Approaches

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish local regulations governing the movement of vessels carrying liquefied petroleum gas in heavily populated areas of Tampa Bay and its approaches and while vessels are moored at the receiving facility. In view of the hazards associated with liquefied petroleum gas the Coast Guard deems it necessary to establish marine safety zones surrounding these vessels in certain prescribed areas and under certain conditions.

DATES: Comments must be received on or before July 28, 1986.

ADDRESS: Comments should be mailed to Commander (mps), Seventh Coast Guard District, 51 SW. First Ave., Miami, FL 33130. The comments will be available for inspection and copying at this office in room 1231. Normal office hours are between 7:30 a.m. and 4:00 p.m. Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Harry Craig, Telephone (305) 350-5651.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CCGD7-86-06) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. The proposed rules may be changed in light of the comments received. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of the notice are LCDR Wayne H. Ogle, Coast Guard Marine Safety Office Tampa, project officer, and LCDR Kenneth E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

This action is being considered in view of the potential hazards associated with the movement of Liquefied Petroleum Gas (LPG). LPG is generally carried as a liquid aboard barges while transiting the Port of Tampa. In its natural state it is a colorless gas with a very slight gassy odor. It is asphyxiating and immediately dangerous to life and health at concentrations of 19,000 PPM. LPG is highly flammable, with a flash point of 76 degrees farenheit at 1.9%-9.5% concentrations. The accidental discharge of a large quantity of LPG, such as that normally carried aboard barges in Tampa Bay, poses a serious threat to the safety and well being of nearby residential and industrial communities.

The Captain of the Port Tampa developed the proposed regulations after consultations with the primary users of Tampa Bay. The precautions of fixed and floating safety zones are deemed necessary because of the potential hazards of explosion and fire accompanying LPG barge movements and transfer operations. It minimizes the chance of a collision by eliminating crossing, overtaking, or passing situations in the affected channels.

Loaded LPG vessels will be permitted to enter Tampa Bay and its approaches with a minimum of three miles visibility. The inherent risks in transporting LPG increases during periods of reduced visibility.

The safety zone is a "floating safety zone" and includes the entire width of the channel and 1,000 yards fore and aft of the LPG vessel. The parameters of the floating safety zone for loaded LPG carriers transiting Tampa Bay are as follows:

(1) Tampa Bay Cut "J" Channel from buoy "10J" (LLNR 1589) north and

including Tampa Bay Cut "K" Channel to buoy "11K" (LLP 117).

(2) When the loaded vessel departs the marked channel at Tampa Bay Cut "K" buoy "11K" (LLP 117) enroute to Rattlesnake slip Tampa, FL, the floating safety zone extends 1,000 yards in all directions surrounding the loaded LPG vessel until it arrives at the entrance to Rattlesnake slip Tampa, FL. While the loaded LPG vessel is maneuvering in the slip, and until it is safety moored at Warren Petroleum, Rattlesnake slip, the floating safety zone extends 150 feet fore and aft of the loaded LPG vessel and the width of the slip.

A fixed safety zone is established when the LPG vessel is safely moored at Warren Petrolem, Rattlesnake slip. The fixed safety zone extends 100 feet waterside from the vessel. Any vessels desiring to enter the fixed safety zone should do so with as slow a speed as conditions permit. The fixed safety zone is deemed necessary to prevent surge of moored LPG barges which may cause damage to moorings, transfer systems and/or loading arms and result in a release of LPG.

For LPG vessels departing port with cargo, the floating safety zone is established when they depart Warren Petroleum and includes the same parameters as described above.

This proposed safety zone regulation would require persons to comply with the general safety regulations contained in 33 CFR 165.23 which prohibit persons from entering the safety zone without authorization of the Captain of the Port Tampa. Mariners will be provided advance notice of scheduled LPG transits of Tampa Bay via marine radio broadcast Notice to Mariners.

The person directing the movement of the LPG vessel is not permitted to enter the safety zone if the time varies more than one half hour from the scheduled time stated in the broadcast Notice to Mariners. If the vessel's actual arrival time at the safety zone will be more than one half hour from the scheduled time permission must again be obtained from the Captain of the Part Tampa prior to commencing the transit. The Captain of the Port Tampa will take into consideration other vessel movements prior to rescheduling the safety zone.

Prior to commencing the movement, the person directing the movement of the LPG vessel shall make a security broadcast to advise other mariners of the intended transit. All additional security broadcasts, as recommended in the U.S. Coast Pilot, shall be made throughout the transit.

These regulations, in substance, will also apply to any waterfront facilities or vessels which may in the future become involved with the movement and or transfer of Liquefied Petroleum Gas (LPG) in the Port of Tampa, as deemed necessary by the Captain of the Port Tampa.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation Regulatory policies and procedures (44 FR 11034), February 26, 1979. The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. LPG carriers have been transiting Tampa Bay for a number of years. The proposed regulations have been followed on a case by case basis in the form of Captain of the Port Orders since September 1985. These Orders have prescribed conditions for operations similar to those contained in the Notice of Proposed Rulemaking. By establishing a permanent rule, the Coast Guard will achieve economies in manpower and administrative time, provide the Port of Tampa with the widest dissemination of these precautionary measures, and minimize the potential dangers of these movements to the port community.

The advance arrival notice requirement is intended to permit non-regulated vessel and facility operators the opportunity to more economically schedule their operations. The time constraint placed on the LPG vessel for its entrance to the safety zone is intended to allow non-regulated vessel operators to more efficiently schedule their movements and not be penalized by last minute changes by LPG vessels.

The fixed safety zone requires that vessels desiring to pass within 100 feet of a moored LPG vessel must first obtain permission from the Captain of the Port Tampa. This is not expected to be restrictive. Rattlesnake slip has a channel width of Approximately 310 feet. The average LPG barge beam calling at Warren Petroleum is 50 feet wide. A 100 foot fixed safety zone allows 160 feet of unrestricted channel for vessels to pass.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors marine safety, Navigation (Water), Security measures, Vessels, Waterways.

Proposed Regulation

PART 165—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 165.703 is added to read as follows

§ 165.703 Tampa Bay, Florida, Safety Zone.

(a) A floating safety zone is established consisting of an area 1000 yards fore and aft of a loaded liquefied petroleum gas (LPG) vessel and the width of Tampa Bay Cut "J" channel from buoy "10J" (LLNR 1589) north and including Tampa Bay Cut "K" Channel to buoy "11K" (LLP 117). Vessels are not permitted to meet or pass the loaded LPG vessel when it transits these channels.

(b) When a loaded LPG vessel departs the marked channel at Tampa Bay Cut "K" buoy "11K" (LLP 117) enroute to Rattlesnake slip, Tampa, FL the floating safety zone extends 1,000 yeards in all directions surrounding the loaded LPG vessel, until it arrives at the entrance to Rattlesnake slip. While the loaded LPG vessel is maneuvering in the slip and until it is safely moored at Warren Petroleum, Rattlesnake slip the floating safety zone extends 150 feet fore and aft of the loaded LPG vessel and the width of the slip.

(c) The floating safety zone is disestablished when the LPG vessel is safely moored at the LPG receiving facility at Warren Petroleum, Rattlesnake slip.

(d) A fixed safety zone is established when an LPG vessel is safely moored at Warren Petroleum, extending 100 feet waterside from the vessel. Vessels are permitted to pass the moored LPG vessel so long as they do not enter the fixed safety zone, and proceed only with extreme caution at the slowest safe speed possible. Vessels may not enter the fixed safety zone without the permission of the Captain of the Port Tampa.

(e) For an outbound vessel loaded with LPG, the floating safety zone is established when the vessel departs from the receiving facility and continues through the areas described in (a) and (b) above.

(f) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(g) The Marine Safety Office Tampa will notify the maritime community of periods during which these safety zones will be in effect by providing advance notice of scheduled arrivals and departures of loaded LPG vessels via a maritime broadcast Notice to Mariners.

(h) The owner, master, agent or person in charge of a vessel or barge, loaded with LPG shall report the following information to the Captain of the Port, Tampa at least twenty-four hours before entering Tampa Bay or its approaches:

(1) Name and country of registry of the vessel or barge;

(2) The name of the port or place of departure;

(3) The name of the port or place of destination;

(4) The estimated time that the vessel is expected to begin its transit of Tampa Bay and the time it is expected to commence its transit of the safety zone.

(5) The cargo carried and amount.

(i) Should the actual time of entry of the LPG vessel into the safety zone area vary more than one half (½) hour from the scheduled time stated in the broadcast Notice to Mariners, the person directing the movement of the LPG vessel shall obtain permission from the Captain of the Port Tampa before commencing the transit.

(j) Prior to commencing the movement, the person directing the movement of the LPG vessel shall make a security broadcast to advise mariners of the intended transit. All additional security broadcasts as recommended by the U.S. Coast Pilot 5 Atlantic Coast shall be made throughout the transit.

(k) Vessels carrying LPG are permitted to enter and transmit Tampa Bay and approaches only with a minimum of three miles visibility.

(l) The Captain of the Port Tampa may waive any of the requirements of this subpart for any vessel or class of vessel upon finding that the operational conditions of a vessel or class of vessels, or other circumstances are such that application of this subpart is unnecessary or impractical for the purposes of port safety or environmental safety.

T.W. Boerger,

Captain, U.S. Coast Guard, Captain of the Port.

May 28, 1986.

[FR Doc. 86-13279 Filed 6-11-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Padre Island National Seashore, Texas; Hunting Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule will amend the existing hunting regulations for Padre Island National Seashore to exclude from hunting the waters surrounding all posted rookery islands and define where and how duck blinds may be placed.

It is necessary in order to help protect rookery island habitat and the birds that nest there and to help prevent the erection and abandonment of permanent duck blinds.

The effect will be to keep hunters away from environmentally sensitive rookery habitat and give them guidance as to what types of duck blinds are acceptable.

DATES: Written comments will be accepted until July 14, 1986.

ADDRESSES: Comments should be addressed to: Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, TX 78418.

FOR FURTHER INFORMATION CONTACT: Max Hancock, Chief Ranger, Padre Island National Seashore, (512) 949-8173.

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 87-712, authorizing establishment of Padre Island National Seashore, retained the privilege of the public to hunt migratory waterfowl on the waters of the Laguna Madre. The first regulations promulgated to control this hunting excluded only the two islands then used by birds for rookery islands. For a variety of reasons the birds have expanded their nesting activity to several other islands. In order to protect these new rookeries it is necessary to post them to exclude people. This revised regulation will allow the necessary posting on a continuing basis and allow changes in the posting as the birds' nesting habits change.

Omission in the original regulation of any mention of duck blinds resulted in the proliferation of abandoned permanently built blinds which were an eyesore and required considerable time on the part of the National Park Service to remove. The addition of the restriction allowing portable blinds only will eliminate this problem.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The principal author of this rulemaking is Max Hancock, Padre Island National Seashore, National Park Service, Corpus Christi, Texas.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed regulations will not have any significant economic effect becasue they only serve to readjust slightly the hunting patterns and methods currently used by hunters. There should be no additional expenditures involved as a result.

The Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neithe an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, it is proposed to amend 36 CFR, Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By revising § 7.75(b) to read as follows:

§ 7.75 Padre Island National Seashore.

* * * * *

(b) *Hunting.* (1) Hunting is prohibited, except that during the open season prescribed by State and Federal agencies, the hunting of waterfowl is allowed upon the waters of Laguna Madre wherever a floating vessel of any type is capable of being operated, at whatever tide level may exist. Provided, however, that the waters immediately adjacent to North and South Bird Islands and other designated rookery islands are closed to all hunting as posted. Hunting, where authorized, is allowed in accordance with all applicable Federal, State and local laws for the protection of wildlife.

(2) The erecting of structures for use as hunting blinds is prohibited except that temporary blinds may be used when removed at the end of each hunting day.

* * * * *

Dated: May 23, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-13201 Filed 6-11-86; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL-3009-3]

Requirements for Implementation Plans; Surface Coal Mines and Fugitive Emissions; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On October 26, 1984, EPA proposed that fugitive emissions be included in threshold applicability determinations of whether surface coal mines would be required to obtain air quality new source review permits (49 FR 43211). On February 28, 1986, EPA reopened this public comment period for 60 days until April 29, 1986 (51 FR 7090). The comment period was subsequently extended until May 29, 1986 (51 FR 15803, April 28, 1986).

Interested parties have requested that EPA extend this public comment period to permit preparation of comments. In response to those requests, I am hereby extending the public comment period by 30 days.

DATES: The close of public comment period is extended from May 29, 1986, to June 30, 1986.

ADDRESSES: Comments should be submitted (preferably in triplicate) to Central Docket Section (LE-132A), U.S. EPA, 401 M Street, SW., Washington, DC 20460, Attention: Docket No. A-84-33.

FOR FURTHER INFORMATION CONTACT: Mr. Kirt Cox, U.S. EPA (MD-15), Research Triangle Park, NC 27711, telephone: 919-541-5591, FTS 629-5591.

Dated: June 6, 1986.

J. Craig Potter,

Assistant Administrator.

[FR Doc. 86-13262 Filed 6-11-86; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 51, No. 113
Thursday, June 12, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Intent to Deauthorize Federal Funding for the South Fork Roanoke River Watershed Project

AGENCY: Soil Conservation Service, USDA.

ACTION: Intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize federal funding for the South Fork Roanoke River Watershed Project, in Floyd, Montgomery, and Roanoke Counties, Virginia. The sponsoring local organizations have concurred in this determination and agree that federal funding should be deauthorized for the project. Information regarding this determination may be obtained from James W. Spieth, Acting State Conservationist, at Soil Conservation Service, 400 North Eighth Street, Federal Building, Richmond, Virginia 23240, telephone (804) 771–2457.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Executive Order 12372 regarding intergovernmental review of Federal and Federally-assisted programs and projects is applicable.)

James W. Spieth,

Acting State Conservationist.

May 29, 1986.

[FR Doc. 86–13231 Filed 6–11–86; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Advisory Committees; Availability of Report on Closed Meetings

AGENCY: Department of Commerce.

ACTION: Announcing public availability of report on closed meetings of advisory committees.

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially-closed meetings of advisory committees as required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the reports have been filed and are available for public inspection at two locations:

Library of Congress, Newspaper and Current Periodicals Reading Room, Room LM133, Madison Building, 1st and Independence Avenue, SE., Washington, DC 20540.

Department of Commerce, Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230, Telephone (202) 377–4217.

SUPPLEMENTARY INFORMATION: The reports cover the closed and partially-closed meetings held in 1985 of 31 committees and their subcommittees, the names of which are listed below:

Automated Manufacturing Equipment Technical Advisory Committee
Biotechnology Technical Advisory Committee
Committee of Chairmen of Industry Advisory Committees for Trade Policy Matters (TPM)
Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee:
—Foreign Availability Subcommittee
—Memory and Media Subcommittee
—Input/Output Subcommittee
Computer Systems Technical Advisory Committee
—Software Subcommittee
Electronic Instrumentation Technical Advisory Committee
Industry Policy Advisory Committee for Trade Policy Matters (TPM).
Industry Sector Advisory Committee (ISAC) on Aerospace Equipment for TPM
—Customs Procedures and Tariffs Subcommittee
—Government Supports Subcommittee
—Military Trade Subcommittee
—Purchase/Finance Subcommittee
—Space Equipment Subcommittee
ISAC on Capital Goods for TPM
—Task Force on Market Access
ISAC on Chemicals and Allied Products for TPM.
ISAC on Consumers Goods for TPM
—Defense Trade Subcommittee
—Subcommittee on Telecommunications
ISAC on Electronics and Instrumentation for TPM
—Defense Trade Subcommittee
—Multilateral Trade Negotiations Subcommittee
—Subcommittee on Telecommunications
ISAC on Energy for TPM
ISAC on Ferrous Ores and Metals for TPM
ISAC on Footwear, Leather, and Leather Products for TPM
ISAC on Industrial and Construction Material and Supplies for TPM
ISAC on NonFerrous Ores and Metals for TPM
ISAC on Paper and Paper Products for TPM
ISAC on Services for TPM
ISAC on Small and Minority Business for TPM
ISAC on Textiles and Apparel for TPM
ISAC on Transportation, Construction, and Agricultural Equipment for TPM
ISAC on Wholesaling and Retailing for TPM
Importers and Retailers Textile Advisory Committee
Industry Functional Advisory Committee on Customs Matters for TPM
Industry Functional Advisory Committee on Standards for TPM
Management-Labor Textile Advisory Committee
Marine Fisheries Advisory Committee
Militarily Critical Technologies List Technical Advisory Committee
National Advisory Committee on Oceans and Atmosphere
National Medal of Technology Nomination Evaluation Committee
President's Export Council Subcommittee on Export Administration
Semiconductor Technical Advisory Committee

Telecommunications Equipment Technical Advisory Committee
Transportation and Related Equipment Technical Advisory Committee

FOR FURTHER INFORMATION CONTACT:
Suzette Kern, Management Analyst, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377–4217.

Dated: June 9, 1986.

Jessica Rickenbach,

Information Management Division, Office of Information Resources Management.

[FR Doc. 86–13268 Filed 6–11–86; 8:45 am]

BILLING CODE 3510–CW–M

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Listing of Establishments Located in Foreign Trade Zones
Form number: Agency—MA–400; OMB–NA
Type of Request: New Collection
Burden: 130 respondents; 130 reporting hours
Needs and uses: This survey is needed to develop a list of companies that operate within Foreign Trade Zones. Census will use the collected information to ensure the validity of the data collected in the economic censuses and in interim annual surveys from companies operating in Foreign Trade Zones.
Affected public: Non-profit institutions
Frequency: One time
Respondent's obligation: Mandatory
OMB Desk Officer: Timothy Sprehe 395–4814

Agency: Bureau of the Census
Title: Construction Project Report (State and Local Governments)
Form number: Agency—C–700 (SL); OMB—0607–0171
Type of Request: Revision of a currently approved collection
Burden: 3,250 respondents; 9,750 reporting hours
Needs and uses: This report is needed to collect the amount of construction put in place each month from a nationwide sample of new state and local government construction projects. These statistics are used extensively by the Federal Government in making policy decisions, and they become part of the Gross National Product. They are also used by the private sector for market analysis and other research.
Affected public: State or local governments
Frequency: Monthly
Respondent's obligation: Voluntary
OMB Desk officer: Timothy Sprehe 395–4814

Agency: Bureau of the Census
Title: Construction Project Report (Private Construction Projects)
Form number: Agency—C–700; OMB—0607–0153
Type of Request: Revision of a currently approved collection
Burden: 6,200 respondents; 18,600 reporting hours
Needs and uses: This report is needed to collect the amount of construction put in place each month from a nationwide sample of new private nonresidential building projects. These statistics are used extensively by the Federal Government in making policy decisions and they become part of the Gross National Product. They are also used by the private sector for market analysis and other research.
Affected public: Businesses or other for-profit institutions
Frequency: Monthly
Respondent's obligation: Voluntary
OMB Desk officer: Timothy Sprehe 395–4814

Agency: Bureau of the Census
Title: Construction Project Report (Multifamily Residential)
Form number: Agency—C–700(R); OMB—0607–0163
Type of Request: Revision of a currently approved collection
Burden: 3,800 respondents; 9,500 reporting hours
Needs and uses: This report is needed to collect the amount of construction put in place each month from a nationwide sample of new townhouse and apartment projects. These statistics are used extensively by the Federal Government in making policy decisions and they become part of the Gross National Product. They are also used by the private sector for market analysis and the research.
Affected public: Businesses or other for-profit institutions
Frequency: Monthly
Respondent's obligation: Voluntary
OMB Desk officer: Timothy Sprehe 395–4814

Agency: Bureau of the Census
Title: 1987 Census of Governments—Local Government Directory Survey
Form number: Agency—G–25, G–26, G–27, G–28, G–29, G–30, G–31, G–32; OMB—NA
Type of Request: New collection
Burden: 85,000 respondents; 21,250 reporting hours
Needs and uses: These forms will be used for the "Local Government Directory" phase of the 1987 Census of Governments. The data will provide a comprehensive updated mailing list of all local governments for subsequent phases of the Census of Governments which pertain to governmental finances and employment; provide a basis for published statistics on the number of local governments and public school systems in the United States and on their organizational characteristics; supply more detailed unpublished listings and machine recorded data for appropriate reference and research use; and provide public employment and finance data for some 53,000 small municipal township, school system, and special district governments.
Frequency: Quinquennially
Respondent's obligation: Voluntary
OMB Desk officer: Timothy Sprehe 395–4814

Agency: Bureau of the Census
Title: Annual Survey of Manufactures
Form number: Agency—MA–1000(MU), MA–1000(SU), MA–1000(S), MA–1000(B); OMB—0607–0449
Type of Request: Revision of a currently approved collection
Burden: 81,000 respondents; 205,900 reporting hours
Needs and uses: This program provides the key measures of manufacturing activity for intercensal years. Its results are used widely as a benchmark of other Federal statistical programs, including the Federal Reserve Board's "Index of Industrial Production", the Bureau of Economic Analysis estimates of the gross national product, and the Department of Commerce's annual publication, "Industrial Outlook."
Affected public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's obligation: Mandatory
OMB Desk officer: Timothy Sprehe 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC. 20503.

Dated: June 6, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division Management.

[FR Doc. 86-13269 Filed 6-11-86; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket 11-86]

Withdrawal of Application for Subzone Relocation, Dole Pineapple Plant

The Hawaii State Department of Planning and Economic Development on behalf of the State of Hawaii, grantee of Foreign-Trade Zone 9, has requested withdrawal of its application to the Foreign-Trade Zones Board to relocate Subzone 9C for the Pineapple cannery of Dole Processed Food Company. The application was filed on March 14, 1986 (51 FR 10246, 3-25-86). Dole has decided to improve its existing facility rather than relocate.

The request is approved and Foreign-Trade Zones Board Docket No. 11-86 is closed.

Dated: June 9, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-13302 Filed 6-11-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Proposed Permit Modification No. 4; Southwest Fisheries Center, National Marine Fisheries Service (P77#7)

Notice is hereby given that the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, has requested a modification of Permit No. 413 issued on April 20, 1983 (48 FR 17638), as modified on July 6, 1983 (48 FR 31062), May 11, 1984 (49 FR 20047) and July 3, 1985 (50 FR 28238), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and the regulations governing endangered species permits (50 CFR Parts 217-222).

The Permit Holder is requesting to conduct captive research studies to determine underwater auditory thresholds of Hawaiian monk seals (*Monachus schauinslandi*) for different sound frequencies and to determine the appropriate dose of an inhibitory analog of gonadotropin-releasing hormone to determine a means of controlling aggressive behavior in monk seals.

Concurrent with the publication of this Notice in the **Federal Register** the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: June 3, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-13267 Filed 6-11-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Export Visa Requirement for Certain Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

June 6, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 12, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the bilateral agreement of November 18, 1982, as amended, concerning certain cotton, wool and man-made fiber textile products from Taiwan, agreement has been reached to further amend the existing export visa requirement to provide for the use of visas for Category 631 as a whole, instead of Category 631-W or 631-O. Accordingly, in the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber gloves, visaed as Category 631, effective on June 12, 1986 for goods exported on and after June 1, 1986. Man-made fiber gloves in Category 631, exported before June 1, 1986, may be visaed using 631-W or 631-O, provided all other requirements established under this visa arrangement have been met.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 6, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of September 27, 1972, as amended, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Taiwan.

Effective on June 12, 1986 and until further notice, the existing export visa requirement established by the directive of September 27, 1972, as amended, is hereby further amended to permit entry for consumption, or withdrawal from warehouse for consumption, in the United States of man-made fiber textile products in Category 631, visaed as Category 631, if exported on and after June 1, 1986. Merchandise in Category 631, exported before June 1, 1986 and visaed as Category

631-W or 631-O, shall not be denied entry provided all other requirements previously established under this visa arrangement have been met.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-13270 Filed 6-11-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 19474]

Designation of Certain Lands as Public Domain Within the U.S. Navy Boardman Bombing Range; Oregon

AGENCIES: Bureau of Land Management, Interior, and the Department of the Navy, Defense.

ACTION: Administrative order.

SUMMARY: This order designates 19,070.62 acres of acquired lands within the Boardman Bombing Range, Oregon, as public domain lands. The land have been and remain closed to surface entry, mining and mineral leasing.

EFFECTIVE DATE: June 12, 1986.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Bureau of Land Management, Oregon State Office, Branch of Lands and Minerals Management, P.O. Box 2965, Portland, Oregon 97208 Phone 503-231-6905.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior and the Secretary of the Navy by section 207 of the Military Construction Act of 1960 (74 Stat. 166,175), as amended by the Act of October 4, 1961 (75 Stat. 777), it is ordered as follows:

1. Subject to valid existing rights, the following described lands, which were acquired by the United States and are located within the Boardman Bombing Range, are hereby designated as public domain lands of the United States subject to all laws and regulations applicable thereto and shall be reserved for use as a bombing range under the administration of the Department of the Navy:

Willamette Meridian

T. 4 N., R. 24 E.,
Sec. 25, N½.
T. 2 N., R. 25 E.,
Sec. 3 lots 1, 2, 3, and 4, S½N½, N½SE¼, SW¼SE¼, and the northerly 2.22 acres of the NW¼NW¼SE¼SE¼;
Sec. 5., lots 1, 2, 3, and 4, S½N½, and S½.
T. 3 N., R. 25 E.
Sec. 1;
Sec. 3, lots 1, 2, 3 and 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3 and 4, S½N½, and S½;
Sec. 7, lots 1, 2, 3 and 4, E½W½, and E½;
Sec. 9, 11, 13, 15, 16, and 17;
Sec. 19, lots 1, 2, 3 and 4, E½W½, and E½;
Sec. 21, lots 23, 25, 27, and 29;
Sec. 31, lots 1, 2, 3 and 4, E½W½, and E½;
Secs. 33, 35, and 36.
T. 4 N., R. 25 E.
Sec. 24, 27, and 29;
Sec. 31, lots 1, 2, 3, and 4, E½W½, and E½;
Sec. 33, 35, and 36.

The areas described aggregate 19,070.62 acres in Morrow County, Oregon.

2. Subject to valid existing rights, the lands described in paragraph 1 shall remain withdrawn from all forms of entry and appropriation under the public land laws, including the mining and mineral leasing laws.

Dated: June 5, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

Dated: March 31, 1986.

John Lehman,

Secretary of the Navy.

[FR Doc. 86-13232 Filed 6-11-86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF ENERGY

Toll-Free Telephone Information Service

On June 17 and June 27, 1983, the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE), respectively, signed a Procedural Agreement (48 FR 38701, 8-25-83) which outlines the procedures which DOE and NRC will observe in their interactions on the characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982 (Pub. L. 97-425, 96 Stat. 2201).

The Procedural Agreement specifies that schedules for technical meetings between DOE and NRC will be made publicly available by DOE in a timely manner with members of the public invited to attend.

To provide members of the public with timely information pertaining to the time, location, and agenda for all such public meetings, DOE established a toll-free telephone information service as follows: For calls originating in Maryland, 800-492-4610; for calls originating in the other 49 States 800-368-2235.

The Procedural Agreement also specifies that DOE will notify the public that a toll-free telephone service is available by annually noticing the toll-free telephone numbers in the **Federal Register.** This notice fulfills DOE's commitment.

For additional information about the toll-free telephone information service, contact: Charles Head, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, RW-24, Washington, DC 20585.

Dated: June 3, 1986.

Ben Rusche,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 86-13306 Filed 6-11-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-34-NG]

Canadian Natural Gas Clearing House (U.S.) Inc. Application to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 21, 1986, of an application filed by Canadian Natural Gas Clearing House (U.S.) Inc. (Canadian Clearing House), a Delaware corporation, for blanket authorization to import up to 75 Bcf for a term of two-years beginning on the date of first delivery. The gas would be sold on a short-term or spot basis to U.S. purchasers including pipelines, local distribution companies, and commercial and industrial end-users. Canadian Clearing House would import gas for its own account as well as for the accounts of its Canadian supplier clients and U.S. purchaser clients. The specific terms of each import and sale would be negotiated on an individual basis including price and volumes. Canadian Clearing House proposes to make quarterly reports to the ERA.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on July 14, 1986.

FOR FURTHER INFORMATION CONTACT:
Tom Dukes, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9590
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. The should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9478. They must be filed no later than 4:30 p.m., July 14, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Canadian Clearing House's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, June 6, 1986

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–13241 Filed 6–11–86; 8:45 am]
BILLING CODE 6450–01–M

[Docket No. [ERA Docket No. 86–33–NG]

Natural Gas Imports/Exports, Tricentrol Petroleum Marketing, Inc., Application to Import/Export Natural Gas

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Application for Blanket Authorization to Import and Export Natural Gas for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 9, 1986, of an application from Tricentrol Petroleum Marketing, Inc. (TPMI), for blanket authorization to import Canadian natural gas and to export natural gas to Canada for short-term sales in the respective country's spot markets. Authorization is requested to import up to 125 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery of the import. Additionally, TPMI requests authorization to export 59 Bcf of natural gas to Canada from the United States over a two-year term, beginning on the date of first delivery.

TPMI proposes to purchase individual volumes of natural gas from various reliable Canadian suppliers for its own account or for others and to resell those imported volumes on a short-term or spot market basis to domestic purchasers. TPMI also proposes to export and market domestically produced gas, primarily supplied from the Bear Paw region of Montana, to various Canadian customers.

The applicant states that it anticipates that some exported domestic gas could be transported in Canada but ultimately re-enter the U.S. and sold to end-users in this country. TPMI intends to utilize existing pipeline facilities for the transportation of the imported and exported volumes. TPMI proposes to submit quarterly reports giving details of individual transactions in the month following each calendar quarter.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than July 14, 1986.

FOR FURTHER INFORMATION CONTACT:
Edward J. Peters, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 252–8162.
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: TPMI requests, in light of recent similar authorizations, that its application be considered on an expedited basis. An ERA decision on applicant's request, particularly with respect to whether additional written comments or other procedures will be necessary in this

case, will not be made until responses to this notice have been received.

The decision on the application to import natural gas will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

The decision on the application to export natural gas will be made consistent with the Secretary of Energy's Delegation Order to the Administrator of the ERA (49 FR 6690, February 22, 1984), under which the domestic need for the gas to be exported is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should comment in their responses on the issue of the domestic need for the gas as set forth in the Delegation Order. The applicant asserts that there is no domestic need for this gas. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures:

In responses to the notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. They must be filed no later than 4:30 p.m., July 14, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of TPMI's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 6, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-13307 Filed 6-11-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of April 21 through April 25, 1986

During the week of April 21 through April 25, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Haley v. Mack, 4/21/86, KFA-0025

Haley V. Mack filed an Appeal from a determination by the Acting Director, Program Support Division, Office of Military Application, concerning a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). Mr. Mack challenged the adequacy of the DOE's search for responsive documents. In considering the Appeal, the DOE found that a document existed which had not been released to Mr. Mack that was within the scope of his original request. The DOE remanded the matter to the Acting Director to determine whether the document is exempt from mandatory disclusure under the FOIA.

Remedial Orders

Lotus Petroleum, Inc., 4/23/86, HRO-0233

Lotus Petroleum, Inc., its president, William T. Tootle, and its vice president, Lynn O Castle (collectively, "Lotus"), objected to a Proposed Remedial Order issued to them on May 3, 1984. In the PRO, the Economic Regulatory Administration found that during the period from April 1, 1980 through December 31, 1980, Lotus violated 10 CFR 212.186 (the layering regulation) by charging prices for crude oil in excess of the actual cost of the crude oil without providing any service or function traditionally and historically associated with the resale of crude oil. In considering the firm's Statement of Objections, the DOE upheld the validity of the layering regulation and found that the firm's crude oil resale transactions violated that regulation as well as the normal business practices rule at 10 CFR 210.62(c). The DOE concluded tha the PRO should be issued as a final Remedial Order and that Lotus, Tootle, and Castle were jointly and severally liable for overcharges in the amount of $11,833,152 plus interest.

MAPCO International Inc., 4/21/86, HRO-0193

MAPCO International Inc. objected to a Proposed Remedial Order which was issued to the firm on June 30, 1983. In the PRO, the Economic Regulatory Administration found that MAPCO's crude oil reselling activities had violated the layering rule, 10 CFR 212.186, which prohibited crude oil resellers from applying a markup in any crude oil sales transaction in which they did not perform any service or function historically and traditionally performed by crude oil resellers. The ERA also alleged that these activities violated the normal business practices and anti-circumvention rules, 10 CFR 205.202, 210.62(c). In addition, the ERA alleged that in other transactions the firm violated the general price rule, 10 CFR 212.186, by reselling crude oil at prices exceeding the firm's permissible average markup.

The DOE found no merit to MAPCO's argument that the layering regulation was not validly promulgated. The DOE held that the layering rule required crude oil resellers to provide some tangible service which facilitated the movement of crude oil from the

producer to the refiner or which provided some other function of economic benefit to the crude oil market, and that MAPCO had not provided such a service or function. The DOE found that these activities also violated the normal business practices and anti-circumvention rules. The DOE further determined that MAPCO had violated the general price rule by reselling crude oil at prices exceeding the firm's permissible average markup, rejecting MAPCO's contention that its prices were lawful under the "safe harbor" provision, because the firm had not demonstrated that it had relied contemporaneously upon the prices charged by its nearest comparable reseller in setting its prices.

The DOE also granted a request by the ERA to clarify the language of the PRO regarding interest to make it clear that interest was not tolled upon issuance of a final Remedial Order. As so modified, the PRO was issued as a final Order.

Requests for Exception

E. H. Moorhouse, Inc., 4/25/86, KEE-0015

E. H. Moorhouse, Inc. filed an Application for Exception seeking relief from its obligation to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering Moorhouse's request, the DOE found that the firm failed to demonstrate that it was particularly adversely affected by the requirement that it file Form EIA-782B. Accordingly, exception relief was denied.

Eastern Petroleum Corp., 4/25/86, KEE-0016

Eastern Petroleum Corporation filed an Application for Exception seeking relief from the requirement that it file Form EIA-782B. In considering Eastern's request, the DOE found that due to an employee injury, the firm was particularly adversely affected by the reporting requirement. However, the DOE found that the difficulties the firm faced were temporary. Accordingly, the DOE granted the exception request in part and relieved the firm from its obligation to file the EIA-782B Forms in the months of February and March 1986.

Implementation of Special Refund Procedures

American Pacific International, Inc., 4/22/86, HEF-0316

The DOE issued a Decision and Order setting forth procedures for distributing $368,000 plus accrued interest remitted to the DOE by American Pacific International, Inc. (API), a crude oil producer and a reseller of motor gasoline, pursuant to a 1983 consent order. The DOE determined that the funds should be divided into two pools, one for crude oil claims and the other for motor gasoline claims. The crude oil funds will be pooled with other crude oil funds in escrow under the Department's Statement of Restitutionary Policy to afford Congress the opportunity to select the means for distributing the funds. The remainder of the API settlement funds will be available to purchasers of API motor gasoline who were injured by the firm's pricing practices during the consent order period, November 1, 1973 through January 27, 1981. The Decision outlines specific information to be included in refund applications.

Standard Oil Company (Indiana), 4/25/86, HQF-0588

The OHA issued a Decision and Order which establishes procedures for the "second-stage" distribution of $30.9 million in unclaimed consent order funds provided by Standard Oil Company (Indiana), now known as Amoco Corporation. The OHA determined that although Amoco operated through much of the United States, the effects of the overcharges were borne disproportionally by certain states. The OHA therefore divided the money remaining in the refined products pool of the Amoco escrow account among 45 states in shares which reflect the volume of price-controlled Amoco products consumed in each during the consent order period—March 1973 through December 1979. The OHA also provided that the funds would be disbursed only after the approval by OHA of restitutionary plans submitted by the states and by Indian tribes.

Refund Applications

City Service, Inc./Neighborhood Store, et al., 4/24/86, RF219-1 et al.

The Office of Hearings and Appeals granted Applications for Refund filed by nine claimants from a fund obtained through a Consent Order entered into with City Service, Inc. All of the applicants were resellers who requested refunds below the $5,000 threshold level. The total amount of the refunds granted was $9,162, consisting of $4,972 in principal plus $4,190 in interest.

Eastern Petroleum Corp./Crofton Country Club et al., 4/21/86, RF325-3 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed in the Eastern Petroleum Corporation special refund proceeding. Four of the applicants were end-users of motor gasoline purchased for Eastern during the consent order period and one was a reseller whose purchases entitled him to a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the five applications under the standards specified in *Busler Enterprises, Inc.*, 13 DOE ¶ 85,308 (1985). The refunds granted in this proceeding total $4,450, representing $3,219 in principal and $1,231 in interest.

Little America Refining Company/Ida Grove Oil Company, S & S Oil Company, 4/21/86, FR112-45, FR112-46

The DOE issued a Decision and Order granting refunds from the Little America Refining Company (Larco) deposit escrow account to two indirect purchasers of Larco covered products, Ida Grove Oil Company and S & S Oil Company. Both firms submitted evidence to indicate that the product they purchased originated with Larco. Since neither of the refund claims exceeded $5,000, the DOE did not require the applicants to submit further evidence of injury. The refunds to these firms total $1,127, representing $753 in principal and $374 in interest.

Little America Refining Co./Westport Energy Corp., Mountain Fuel Supply Co./Westport Energy Corp., 4/24/86, RF112-0184, RF118-0002

Westport Energy Corp. filed Applications for Refund seeking portions of the funds obtained by the DOE through Consent Orders with Little America Refining Co. and Mountain Fuel Supply Co. The Applications were based on one and two eligible purchases during the respective consent order periods, suggesting that Westport was a spot purchaser of both consent order firms' covered petroleum products. Accordingly, the DOE requested that Westport submit information to overcome the spot purchaser presumption of non-injury. Since Westport did not respond to the DOE request for additional information, the firm's two Applications were dismissed.

Mobil Oil Corporation/Frank A. Timpani Service et al., 4/21/86, RF225-2 et al.

The DOE issued a Decision granting 63 Applications for Refund from the Mobil Oil Corporation escrow account filed by resellers and retailers of Mobil refined petroleum products. Fifty-seven retailers of motor gasoline elected to apply for refunds based upon the presumptions for motor gasoline claimants set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Six applicants who purchased products other than motor gasoline received refunds based on the small claims presumption. The DOE granted refunds totalling $46,239 ($40,055 principal plus $6,184 interest).

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Pellett Petroleum Company, 4/21/86, RF26-32

The DOE issued a Decision and Order approving an Application for Refund filed by Pellett Petroleum Company (Pellett), a reseller of Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Richardson) natural gas liquids, that purchased the product directly from Richardson. In accordance with the procedures set forth in *Sid Richardson Carbon and Gasoline Company*, 10 DOE ¶ 85,056 (1983), Pellett elected to limit its claim to the small claims threshold amount of 720,000 gallons of annual purchases. Therefore, Pellett was eligible for a refund based on total purchases of 4,140,000 gallons. The total refund approved in the Decision is $49,250 ($26,045 principal plus $23,205 interest).

Union Texas Petroleum Corporation/Petroleum Supply, Inc., 4/25/86, RF140-4

Petroleum Supply, Inc. (PSI), a petroleum products reseller, filed a refund claim for a portion of the Union Texas Petroleum Corporation (UTP) global consent order fund based upon UTP's alleged failure to supply PSI with motor gasoline and middle distillate in violation of the Mandatory Petroleum Allocation Regulations. In considering the firm's application, the DOE found that during the period February 15, 1974 through January 27, 1981, UTP failed to supply UTP with 14.37 million gallons of motor gasoline and that, as a result, PSI was injured in the amount of $1,247,223. The DOE therefore approved a refund in this amount, but withheld the disbursement of a portion of the refund equivalent to PSI's potential overcharge liability in a pending enforcement proceeding.

Dismissals

The following submissions were dismissed:

Name and Case No.

Alvarado Premier Service Station—RF46–45
B&J General Store—RF40–598
Clark-Cutler-McDermott Co.—RF225–536
D&K Services, Inc.—RF40–553
Freeway Service Station—RF46–48
G.F. Wright Steel & Wire Co.—RF225–526
GPE Controls—RF225–558
Government Accountability Project—KFA–0028
Hagerty Oil Co., Inc.—RF40–1731
Harold Sears Gulf Station—RF40–555
Harper's Service Center—RF46–41
Harvey Friar—RF40–1641
Hecox, Inc.—RF40–00620
Hydrocarbon Transportation, Inc.—RF225–559
J-B Freeway—RF46–42
Jim Pancallo Gulf Service—RF40–1661
K&K Gulf Inc.—RF40–1737
L. Farber Co., Inc.—RF225–525
Larson's Freeway—RF46–43
Lyman Jones—RF200–1
Marion Corporation—HRO–0246
Matovcik's Gulf—RF40–1742
Mickey's Gulf—RF40–1703
Miller Premier Service—RF46–44
Palisades Interstate—RF225–555
Parker & Judycki—RF40–1744
Paul Bradigan & Sons, Inc.—RF40–1631
Pemco Die Casting Corp.—RF225–517
Racico & Romanek, Inc.—RF40–1627
Shell Isle Gulf Service—RF40–1634
Thomas L. & Donna E. Shor—RF40–1721
Valley Drive Gulf—RF40–1659
Witt Propane Gas Corp.—RF40–1718
York Truck Rental—RF40–0492

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guildelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 30, 1986.

[FR Doc. 86–13243 Filed 6–11–86; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of April 28 Through May 2, 1986

During the week of April 28 through May 2, 1986, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Magna Energy Corp., 4/28/86, KRO–0230

Magna Energy Corporation filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration issued to the firm on December 5, 1985. The PRO alleges that Magna sold crude oil at excessive prices in violation of the layering rule, 10 CFR 212.186, and received $15,034,984.76 in overcharges. Although Magna filed a Notice of Objection, it subsequently decided not to file a Statement of Objections to the PRO. The DOE determined, therefore, that the PRO set forth a prima facie case which was not rebutted by Magna's Notice of Objection, and concluded that the PRO should be issued as a final Order.

Request for Exception

W.D. Brooks, Inc., 5/2/86, KEE–0021

W.D. Brooks, Inc. filed an Application for Exception seeking relief from its obligation to submit Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering Brook's request, the DOE found that the firm had not shown that it was uniquely and adversely affected by the requirement that it file Form EIA–782B. Accordingly, the Application was denied.

Motion for Discovery

Trigon Exploration, Inc., 4/29/86, KRD–0110, KRH–0110

Trigon Exploration, Inc. filed a Motion for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order which was issued to the firm by the Economic Regulatory Administration (ERA) on August 30, 1985. The PRO alleged that Trigon improperly classified and priced crude oil in violation of the DOE regulations and, as a result, obtained overcharges of $624,206.81, plus interest.

In its Motion for Discovery, Trigon requested that the ERA produce for inspection all non-privileged written materials prepared in connection with the calculation of Trigon's alleged overcharges and the accrued interest. In considering that request, the DOE found that after the initiation of the proceeding, ERA had provided Trigon with all non-privileged audit workpapers prepared in the case. In its Reply, Trigon did not state that the documents prepared by the ERA were insufficient. Accordingly, the DOE found that the requested discovery was not necessary for the resolution of the PRO.

In considering the Motion for Evidentiary Hearing, the DOE found that one of the specified factual disputes between Trigon and the ERA was irrelevant to the resolution of the PRO proceeding and that the second factual dispute could be more effectively resolved through written submissions. Therefore, Trigon's Motions for Discovery and Evidentiary Hearing were denied.

Motion for Protective Order

Geraldine H. Sweeney, 5/2/86, KEJ–0001

Geraldine H. Sweeney filed a motion for protective order in the Getty Oil Company special refund proceeding, Case No. HEF–0209. Subject to a protective order, Sweeney sought access to confidential, proprietary data used by the Office of Hearings and Appeals in formulating proposed refund procedures in the Getty proceeding. Sweeney contended that she was a potential claimant in the proceeding, that she would seek to be the class representative for other consumers of Getty motor gasoline, and that she would use the requested information to prepare an altenate analysis of probable injury based on the analysis adopted in the Stripper Well Litigations. In considering Sweeney's request, the DOE noted that Sweeney had waited until late in the proceeding to file her request and had not even shown that she was a potential claimant since she had not shown that she made any purchases from Getty. In addition, the DOE found that Sweeney's proposed analysis would yield no useful comments. Consequently, the Sweeney motion was denied.

Implementation of Special Refund Procedures

Petroleum Sales and Service, Inc., 5/2/86, HEF–0151

The DOE issued a Decision and Order implementing a plan for the distribution of $59,595 received through a consent order entered into by Petroleum Sales and Service, Inc. (PS&S) and the DOE on September 29, 1981. The DOE determined that the PS&S settlement fund should be distributed to customers that purchased PS&S motor gasoline during the period April 1, 1979 through March 31, 1980. The specific information required in Applications for Refund is set forth in the Decision.

Refund Applications

General Equities, Inc./Mike's Getty, et al., 4/30/86, RF224–1 ET AL.

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the General Equities, Inc. special refund proceeding. Each of the applicants was a reseller of motor gasoline whose volume of purchases from General Equities during the consent order period entitled it to a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the nine applications under the standards specified in *Busler Enterprises, Inc.*, 13 DOE ¶ 85,308 (1985). The refunds granted in this proceeding total $21,690, representing $20,233 in principal and $1,457 in interest.

Gulf Oil Corporation/Hilltop Auto Laundry et al., 5/1/86, RF40–32 et al.

The DOE issued a Decision granting refunds from the Gulf Oil Corporation consent order escrow fund to 16 purchasers of Gulf refined petroleum products. Each of the 16 refund applicants demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. The total amount of refunds granted was $24,252, representing $20,405 in principal and $3,847 in interest.

Gulf Oil Corporation/James O. Pendleton Gulf (D/B/A Pendelton's Interstate Gulf) Pendelton's Gulf, 5/2/86, RF40–1862, RF40–1863

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to James O. Pendleton Gulf (d/b/a Pendleton's Interstate Gulf) and Pendleton's Gulf, two retailers of

Gulf refined petroleum products. Both applicants demonstrated that they would not have been required to pass through to their customers a cost reduction equal to the amount of the rfund claimed. The refunds to these firms total $4,377, consisting of $3,683 in principal and $694 in interest.

Gulf Oil Corporation/Manchester's Gulf, et al., 5/2/86, RF40-155 et al.

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to 13 purchasers of Gulf refined petroleum products. All of the applicants are retailers that demonstrated that they would not have been required to pass through to their customers a cost reduction equal to the amount of the refund claimed. The refunds to the 13 purchasers total $20,269, consisting of $17,054 in principal and $3,215 in interest.

Indian Oil Company, Inc./Skowhegan Robo Wash, Jim Martin, Inc., 5/1/86, RF226-1, RF226-2

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Indian Oil Company, Inc., special refund proceeding. One of the applicants was an end-user of motor gasoline purchased from Indian and the other a reseller whose purchases from Indian during the consent order period entitled it to a refund below the $5,000 small claims ceiling. The two applications were granted under the standards specified in *Busler Enterprises, Inc.*, 13 DOE ¶ 85,308 (1985). The refunds granted in this proceeding total $1,281, representing $1,086 in principal and $195 in interest.

Leonard E. Belcher, Inc./Bolduc's Fuel Service, et al., 5/2/86, RF227-17 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 18 resellers and retailers that purchased No. 2 fuel oil directly from Leonard E. Belcher, Inc. (Belcher). None of the refunds claimed exceeded the $5,000 ceiling of the small claims presumption. In accordance with the procedures outlined in *Leonard E. Belcher, Inc.*, 13 DOE ¶ 85,348 (1968), the DOE concluded that the applicants should receive a total of $90,310, representing $73,577 in principal plus $16,733 in interest.

Little America Refining Company/L.L. Olsen, Oil Company, 5/2/86, RF112-123

The DOE issued a Decision and Order granting a refund from the Little America Refining Company (Larco) deposit escrow account to L.L. Olsen Oil Co., a wholesaler and retailer of Larco products. Since the principal amount of the refund claimed was less than $5,000, the applicant was not required to make a detailed showing of injury. Accordingly, L.L. Olsen Oil Company received a refund of $7,317, representing $4,871 in principal and $2,446 in interest.

Mapco, Inc./Shawgo Gas Service, 5/2/86, RF108-12

Shawgo Gas Service (Shawgo) filed an application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with MAPCO, In (MAPCO). Shawgo demonstrated that it purchased 282,012 gallons of propane from MAPCO during the consent order period. Using a volumetric methodology, the DOE determined that Shawgo's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted Shawgo a refund of $895.71, representing $507.72 in principal and $388.09 in accrued interest.

Mobil Oil Corporation/Elben Mobil et al., 5/1/86, RF225-71 ET AL.

The Department of Energy issued a Decision and Order granting refunds from the Mobil Oil Corporation deposit fund escrow account to 67 purchasers of Mobil motor gasoline. All of the applicants are retailers that elected to apply for refunds under the applicable level-of-distribution percentage outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,399 (1985). The refunds totaled $31,031, including accrued interest.

Pioneer Corporation/Warren Petroleum Company, 4/30/86, RF52-3

The Warren Petroleum Company filed an Application for Refund, seeking a portion of the funds remitted to the DOE by Pioneer Corporation pursuant to a DOE consent order. Warren purchased 61,078,902 gallons of natural gas liquid products (NGLPs) from Pioneer during the consent order period. The DOE found that for a portion of the NGLPs, Warren was charged prices which exceeded the average prevailing market prices in effect at the time. The DOE average prevailing market prices in effect at the time. The DOE thus concluded that Warren experienced competitive injury. Accordingly, Warren was granted a refund of $203,687.70 plus accrued interest, equal to the number of gallons purchased at above market prices multiplied by a per gallon refund amount.

Saber Energy, Inc./Mobil Oil Corporation, 5/1/86, RF192-13

The DOE issued a Decision and Order concerning an Application for Refund filed by Mobil Oil Corporation from a consent order fund made available by Saber Energy, Inc. The DOE stated that since Mobil was a spot purchaser of Saber motor gasoline, the firm was required to overcome the presumption that it was not injured by those Saber spot purchases. The DOE found that because Mobil had imposed allocations fractions during the time of its Saber purchases and further because it sold the Saber product at less than its purchase price, Mobil had overcome the spot purchaser presumption. Accordingly, the firm was granted its full volumetric refund of $45,736 plus interest of $18,564.

Standard Oil Company (Indiana) Milwaukee County Transit System et al., 5/2/86, RF21-12401 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed on the basis of the procedures outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*). In accordance with these procedures, each applicant agreed to accept a refund based on the presumptions listed in *Amoco*. After examining the evidence and supporting documentation, the DOE concluded that the applicants should receive refunds based on the number of gallons claimed. The refunds granted in this decision total $77,503.

Texas Oil and Gas Corporation/Bruin Corporation, 4/30/86, RF42-5

Bruin Corporation (Bruin) filed an Application for Refund pursuant to a Decision and Order issued on August 10, 1984 in *Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 (1984). In its Application, Bruin sought a portion of fund obtained by the DOE through a consent order entered into by the DOE and Texas Oil & Gas Corporation (TOGCO) on August 28, 1981. In considering its request, the DOE found that Bruin made only two isolated purchases of propane from TOGCO during the entire 58 month consent order period and that the firm had not rebutted the presumption that as a spot purchaser it had experienced no injury. Accordingly, the Bruin Application was denied.

Dismissals

The following submissions were dismissed:

Company Name and Case No.

Buddies Service Station—RF40-1420
Joseph A. Eckel—RF40-1419
Curt Spotts—RF40-1465
Kavanagh Oil Corporation—RF184-4
Tullo Oil Company, Inc—RF184-3

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

June 3, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-13242 Filed 6-11-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $699,697.92 (plus accrued interest) obtained from Mountain Fuel Supply Company, Case No. KEF-0025. The OHA has tentatively decided that the funds will be distributed in accordance with the DOE Policy of Restitution for Crude Oil Overcharges.

DATE AND ADDRESS: Comments must be filed in duplicate by July 14, 1986 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display conspicuously a reference to Case No. KEF–0025.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from Mountain Fuel Supply Company (Mountain Fuel). Mountain Fuel remitted monies to the DOE to settle possible pricing violations with respect to its sales of crude oil. The firm's payment is being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively decided that distribution of the monies received from Mountain Fuel will be governed by the DOE Policy of Restitution for Crude Oil Overcharges, 50 Fed. Reg. 27400 (1985). That policy states that all overcharge funds associated with crude oil miscertifications should be held in escrow pending Congressional action.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 6, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 6, 1986.

Name of Case: Mountain Fuel Supply Company

Date of Filing: April 3, 1986

Case Number: KEF–0025

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

The ERA has requested that the OHA formulate procedures to distribute $699,697.92 which the DOE received from Mountain Fuel Supply Company (Mountain Fuel).

I. Background

During 1973 and 1974 (the audit period) Mountain Fuel was the sole operator and part owner of the Dry Piney Field in southwest Wyoming. As the result of these activities, Mountain Fuel was a "producer" of crude oil and was subject to the provisions of the DOE Mandatory Petroleum Price Regulations. The ERA conducted an audit of Mountain Fuel's activities and determined that it violated the regulations by selling lower tier crude oil from the Dry Piney Field at prices above the posted price during the audit period. Therefore, on September 16, 1977, the ERA issued a Remedial Order to Mountain Fuel requiring Mountain Fuel to refund its overcharges. On April 24, 1978, The Office of Hearings and Appeals issued a Decision and Order affirming the ERA's findings *Mountain Fuel Supply Co.*, 1 DOE ¶ 80,252 (1978).[1]

Mountain Fuel challenged the OHA's Decision in the U.S. District Court for the District of Utah, which granted Mountain Fuel's motion for summary judgment. The DOE appealed the District Court's decision to the U.S. Temporary Emergency Court of Appeals (TECA) and obtained a reversal of the District Court's order. *Mountain Fuel Supply Co. v. DOE*, 656 F.2d 690 (Temp. Emer. Ct. App. 1981). The case was remanded for further proceedings.

On March 25, 1985, Mountain Fuel and the DOE entered into a Stipulation of Settlement. Under the terms of the settlement, Mountain Fuel paid $699,697.92 to the DOE in complete settlement of the issues in the Remedial Order. Mountain Fuel's payment is currently being held in an interest-bearing escrow account pending distribution by the DOE.

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's petition to implement Subpart V proceedings with respect to the monies received from Mountain Fuel and have determined that such proceedings are appropriate. Accordingly, we will grant the ERA's petition.

III. DOE Policy Regarding Crude Oil Overcharges

The monies which Mountain Fuel remitted to the DOE settle alleged crude oil overcharges. Therefore, we propose that the DOE Policy of Restitution for Crude Oil Overcharges, 50 FR 27400 (1985) (DOE Policy), govern the distribution of the funds.

The DOE Policy is to hold all overcharge funds associated with crude oil miscertifications in escrow, pending Congressional action. The Policy arose out of a report which the OHA issued in the Stripper Well Exemption Litigation. *Report of the Office of Hearings and Appeals, In re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 (1985) (the OHA Report).

The OHA Report examined the general effect of crude oil miscertifications on the Entitlements Program.[2]

[1] The OHA's Decision made one minor amendment to the Remedial Order. However, this amendment did not affect the OHA's finding that Mountain Fuel violated the regulations.

[2] The Crude Oil Entitlements Program, part of the DOE's system of mandatory petroleum price and

Continued

On the basis of the OHA's findings, the Deputy Secretary of Energy issued a statement establishing the DOE Policy on June 21, 1985. The statement concluded that an indirect means of effectuating restitution was appropriate. 50 FR 27400 (July 2, 1985). Accordingly, the policy statement announced that the DOE would maintain overcharge monies in escrow to afford Congress the opportunity to select the means of making indirect restitution. Should Congress decline to act on the issue by the fall of 1986, the DOE stated that the funds should be paid to the miscellaneous receipts accounts of the United States Treasury in order to benefit all Americans.

In light of the DOE Policy, the OHA issued an order announcing that it intended to apply the DOE policy in special refund cases involving crude oil. 50 FR 27402 (July 2, 1985). The OHA solicited comments which were considered and rejected in *Amber Refining, Inc.*, 13 DOE § 85,217 (1985) (*Amber*). Thus, the OHA has determined that it will apply the DOE policy in implementing special refund procedures in all cases like the present one.

IV. Refund Procedures

In view of the OHA's decision in *Amber*, we propose that the refund monies received from Mountain Fuel should be pooled with other crude oil settlement funds and distributed in accordance with the DOE Policy.

Before taking the action which we have proposed, we intend to publicize our proposal and to solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Decision and Order in the **Federal Register.**

It is Therefore Ordered That:

The refund amount obtained from Mountain Fuel Supply Company pursuant to a Stipulation of Settlement entered into with the Department of Energy on March 25, 1985 will be distributed in accordance with the foregoing Decision.

[FR Doc. 86-13244 Filed 6-11-86; 8:45 am]

BILLING CODE 6450-01-M

allocation controls, was in effect from November 1974 through January 1981. The program was intended to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this end, refiners were required to make transfer payments among themselves through the purchase and sale of entitlements. Because of the manner in which the program worked, it had the effect of dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. **Amber Refining, Inc.**, 13 DOE § 85,217 (1985).

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $240,364.29 (plus accrued interest) obtained from J.N. Abel, Case No. KEF-0034. The OHA has tentatively decided that the funds will be distributed in accordance with the DOE Policy of Restitution for Crude Oil Overcharges.

DATE AND ADDRESS: Comments must be filed in duplicate by July 14, 1986 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a conspicuous reference to Case No. KEF-0034.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director, or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from J.N. Abel (Abel). Abel remitted monies to the DOE to settle possible pricing violations with respect to its sales of crude oil. Abel's payment is being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively decided that distribution of the monies received from Abel will be governed by the DOE Policy of Restitution for Crude Oil Overcharges, 50 FR 27400 (1985). That policy states that all overcharge funds associated with crude oil miscertifications should be held in escrow pending Congressional action.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: June 5, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 5, 1986.

Name of Case: J.N. Abel
Date of Filing: April 18, 1986
Case Number: KEF-0034

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

The ERA has requested that the OHA formulate procedures to distribute $240,364.29 plus interest which the DOE received from J. N. Abel (Abel).

I. Background

During the period September 1, 1973 through June 30, 1976 (the audit period) Abel was the operator of three oil producing properties located in Texas.[1] As the result of these activities, Abel was a "producer" of crude oil and was subject to the provisions of the DOE Mandatory Petroleum Price Regulations. The ERA conducted an audit of Abel's activities and determined that Abel violated the regulations with respect to its sales of crude oil to Mobil Oil Corporation (Mobil) during the audit period. Therefore, in November 1977, the ERA issued a Remedial Order to Abel, requiring that Abel refund its overcharges.

[1] The three properties are: (1) The Laredo National Bank Trustees, et al. property; (2) the LNB Trustees Hunter property; and (3) the Floyd Billings property.

Abel challenged the ERA's determination in an appeal filed with the Office of Hearings and Appeals. The OHA upheld the ERA's determination that Abel violated the price regulations. *J.N. Abel*, 7 DOE ¶ 80,115 (1980). Abel brought an appeal from the OHA's Decision in the U.S. District Court for the Southern District of Texas. On February 6, 1984 Abel and the DOE entered into an Agreed Final Judgment to settle the case. Under the terms of the settlement, Abel paid $240,364.29 plus interest to the DOE.[2] The Agreed Final Judgment settles Abel's obligations under the November 1977 Remedial Order.

Abel's payment is currently being held in an interest-bearing escrow account pending distribution by the DOE.

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's petition to implement Subpart V proceedings with respect to the monies received from Abel and have determined that such proceedings are appropriate. Accordingly, we will grant the ERA's petition.

III. DOE Policy Regarding Crude Oil Overcharges

The monies which Abel remitted to the DOE settle alleged crude oil overcharges. Therefore, we propose that the DOE Policy of Restitution for Crude Oil Overcharges, 50 FR 27400 (1985) (DOE Policy), govern the distribution of the funds.

The DOE Policy is to hold all overcharge funds associated with crude oil miscertifications in escrow, pending Congressional action. The Policy arose out of a report which the OHA issued in the Stripper Well Exemption Litigation. *Report of the Office of Hearings and Appeals, In re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 (1985) (the OHA Report).

The OHA Report examined the general effect of crude oil miscertifications on the Entitlements Program.[3]

On the basis of the OHA's findings, the Deputy Secretary of Energy issued a statement establishing the DOE Policy on June 21, 1985. The statement concluded that an indirect means of effectuating restitution was appropriate. 50 FR 27400 (July 2, 1985). Accordingly, the policy statement announced that a DOE would maintain overcharge monies in escrow to afford Congress the opportunity to select the means of making indirect restitution. Should Congress decline to act on the issue by the fall of 1986, the DOE stated that the funds should be paid to the miscellaneous receipts accounts of the United States Treasury in order to benefit all Americans.

In light of the DOE policy, the OHA issued an order announcing that it intended to apply the DOE policy in special refund cases involving crude oil. 50 FR 27402 (July 2, 1985). The OHA solicited comments which were considered and rejected in *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985) (*Amber*). Thus, the OHA has determined that it will apply the DOE policy in implementing special refund procedures in all cases like the present one.

IV. Refund Procedures

In view of the OHA's decision in *Amber*, we propose that the refund monies received from Abel should be pooled with other crude oil settlement funds and distributed in accordance with the DOE Policy.

Before taking the action which we have proposed, we intend to publicize our proposal and to solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Decision and Order in the **Federal Register.**

It is Therefore Ordered That:

The refund amount obtained from J.N. Abel pursuant to an Agreed Final Judgment entered into with the Department of Energy on February 6, 1984 will be distributed in accordance with the foregoing Decision.

[FR Doc. 86-13245 Filed 6-11-86; 8:45 am]

BILLING CODE 6450-01-M

[2] Abel has not admnitted to any violations of the DOE regulations.

[3] The Crude Oil Entitlements Progam, part of the DOE's system of mandatory petroleum price and allocation controls, was in effect from November 1974 through Janaury 1981. The program was intended to equalize access to the benefits of crude oil price controls among all domsstic refiners and their downstream customers. To accomplish this end, refiners were required to make transfer payments among themselves through the purchase and sale of entitlements. Because of the manner in which the program worked, it had the effect of dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *Amber Refining, Inc.*, 13 DOE ¶ 85.217 (1985).

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of funds obtained as a result of a Consent Order which the DOE entered into with Louis Porter d/b/a Dalco Petroleum, Inc., of Tulsa, Oklahoma, and/or Hydrocarbons, Inc., and/or Porter Investment Co., (herein jointly referred to as Dalco).

DATE AND ADDRESS: Applications for refund of a portion of the Dalco consent order fund must be received within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Dalco Petroleum, Inc. Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by Dalco Petroleum, Inc., of Tulsa, Oklahoma, which settled possible pricing violations in the firm's sales of propane to customers during the November 1, 1973 through March 31, 1974 audit period.

A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Dalco consent order funds was issued on February 3, 1984. 49 FR 5661 (February 14, 1984).

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by the

identified customers who purchased propane from Dalco during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: June 4, 1986.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

June 4, 1986.

Name of Firm: Dalco Petroleum, Inc.
Date of Filing: October 13, 1983
Case Number: HEF–0060

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) of the DOE may petition the Office of Hearings and Appeals (OHA) to formulate and implement special refund procedures in order to remedy the effect of alleged violations of the DOE price and allocation regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that OHA establish special refund procedures for the distribution of monies received pursuant to a consent order entered into by the DOE and Dalco Petroleum, Inc. (Dalco) of Tulsa, Oklahoma.[1]

I. Background

Dalco is a "reseller" of propane as that term was defined in 10 CFR 212.31. Dalco's propane sales were therefore subject to the Mandatory Petroleum Price Regulations, and specifically the provisions of 10 CFR Part 212, Subpart F. An ERA audit of Dalco's business records revealed probable violations of the price regulations in Dalco's sales of propane during the five month period from November 1, 1973 through March 31, 1974 (the audit period). In a Proposed Remedial Order (PRO) issued to Dalco on February 19, 1981, the ERA alleged that during the audit period, Dalco overcharged certain specified propane customers by $592,476.84.

In order to settle all claims and disputes between Dalco and the DOE regarding Dalco's compliance with DOE price regulations in sales of propane to those specified customers during the audit period, Dalco and the DOE entered into a consent order on September 30, 1981. The specific transactions covered by the consent order involve Dalco and seven firms, each identified in the attachments to the PRO. These firms are listed in the Appendix to this Decision and Order. In the consent order, Dalco agreed to pay $380,347 to the DOE; however, Dalco has failed to follow the agreed payment schedule and has paid only $317,587 to the DOE to date.[2] This sum is currently being held in an interest bearing escrow account pending distribution by the DOE.

On February 3, 1984, we issued a Proposed Decision and Order in which we determined that it was appropriate to establish a special refund proceeding with respect to the Dalco consent order fund. In that Proposed Decision, we tentatively set forth procedures to distribute refunds to parties which were injured by Dalco's alleged pricing violations in sales of propane during the consent order period. (In the present case, the consent order period is coterminous with the audit period.) Specifically, we proposed to disburse funds in a first stage of the proceeding to claimants who could demonstrate that they were adversely affected by Dalco's alleged overcharges during the consent order period. We suggested that these injured parties were most likely the seven customers who, according to the PRO, were overcharged, but indicated that we would consider claims from any individual or firm that could show that it purchased Dalco propane during the consent order period. We stated that the money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process and we pointed out that the ultimate disposition of those second-stage funds would not be determined until after completion of the first stage.

The Proposed Decision was published in the **Federal Register** on February 14, 1984 (49 FR 5661), and comments on the proposed refund mechanism were due to be submitted within 30 days of publication. Comments were received from the States of Arkansas, Delaware, Kansas, Iowa, Louisiana, North Dakota, Rhode Island, West Virginia, Florida, and Texas. These comments requested that any monies remaining in the Dalco settlement fund after refunds are made to Dalco customers which filed meritorious claims be distributed to the states for use in energy-related projects. No comments were received which addressed the proposed mechanics of the refund process itself.

The purpose of this Decision and Order is to establish procedures to be used for filing and processing claims in the first stage of the Dalco refund proceeding. This Decision sets forth the information that a purchaser of Dalco propane should submit in order to establish eligibility for a portion of the consent order funds. We will not, however, determine procedures for the second stage of the refund process in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the residual fund, among other factors.[3] *Office of Enforcement*, 9 DOE ¶ 82,508 (1981).

II. Jurisdiction

The Subpart V regulations set forth general guidelines by which OHA may formulate and implement a plan of distribution for funds received as a result of enforcement proceedings. It is the DOE policy to use the Subpart V process to distribute such funds. For a detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981). As we stated in the Proposed Decision, we have determined that a Subpart V proceeding is an appropriate method for distributing the Dalco consent order fund. Therefore, we will grant the ERA's petition and assume jurisdiction over the funds received pursuant to the Dalco consent order.

III. Refund Procedures

A. Eligible Claimants

In the first stage, refund monies will be distributed to those firms who were injured by the specified transactions referred to in the Dalco consent order. The firms who purchased propane in those transactions are listed in the Appendix to this Decision and Order. In order to be eligible for a refund, each claimant will be required to provide information concerning the volume of Dalco propane it purchased during the consent order period. As in previous Subpart V Decisions, we find that those

[1] The consent agreement was actually entered into by Louis Porter d/b/a Dalco Petroleum, Inc., and/or Hydrocarbons, Inc. and/or Porter Investment Co. In this proceeding, these entities will be jointly referred to as Dalco. Any statement in this Decision which refers to Dalco or Dalco Petroleum, Inc. also applies to these entities.

[2] According to the ERA, Dalco has filed for bankruptcy, and there is little likelihood that additional payments will be made in the near future. We have decided to go forward with this special refund proceeding despite Dalco's delinquency in payment.

[3] Since Dalco's propane sales were made in Texas and several Midwestern states, it is not clear that most of the states that submitted comments have a legitimate interest in this proceeding.

customers who were ultimate consumers of Dalco propane absorbed Dalco's alleged overcharges. They will therefore not be required to make a further demonstration of injury in order to receive a refund. In contrast, refiners and resellers (i.e., retailers and wholesalers) who resold Dalco's propane will be required to demonstrate that they did not pass on cost increases implemented by Dalco to their own customers. *See, e.g.,Office of Enforcement,* 8 DOE ¶ 82,597 (1981). This can be done by showing that during the period covered by the consent order they would have kept their propane prices at the same level had the alleged overcharges not occurred. While there are a variety of means by which a claimant could make this showing, a reseller or refiner should generally demonstrate that at the time it purchased Dalco propane market conditions would not prmit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, the reseller or refiner must show that it had a "bank" of unrecovered costs in order to demonstrate that it did not subseqently recover these costs by increasing its prices. The maintenance of a bank would not, however, automatically establish injury. *See Tenneco Oil Co.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

In the Proposed Decision, we suggested that resellers and refiners which made spot purchases from Dalco should be presumed to have suffered no injury. We received no adverse comments on this proposal. Accordingly, we have established a rebuttable presumption that any spot purchaser of Dalco propane during the audit period was able to pass through to its customers any overcharges it incurred. We will, however, consider evidence from a spot purchaser which establishes that it was unable to recover the product prices it paid to Dalco and the extent to which it was injured by the spot purchase(s). *See Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,200 (1982).

We noted in the Proposed Decision that one of the seven Dalco propane customers identified in the ERA audit workpapers, Farmland Industries, Inc., is an agricultural cooperative. In prior Subpart V proceedings, we have determined that although agricultural cooperatives generally would pass overcharges through to their customers, they generally would pass through any refunds as well. Accordingly, we have found that, with regard to sales to their members, cooperatives need not make a detailed showing of injury and my qualify for a refund based on documentation of their purchase volumes. *See, e.g., OKC Corp./Chemical Express Carriers, Inc.*, 11 DOE § 85,051 (1983). As suggested in the Proposed Decision, we shall follow this practice in the present proceeding also. Therefore, we will require Farmland to certify that it will pass any refund received through to its customers, to provide us with a full explanation of how it plans to accomplish this restitution, and to explan how it will notify its members of the receipt of the money. We note, however, that those volumes sold by Farmland to non-members will be treated in the same manner as sales by other resellers.

Since the issuance of the Proposed Decision, we have discovered from the ERA audit file that one of the identified Dalco customers, Redigas of Watertown (Redigas), was affiliated with Hydrocarbons, Inc., one of the firms which entered into the consent order and are collectivley referred to as Dalco in this proceeding (see footnote 1). On the basis of the information currently available to us, we believe it is appropriate to establish a rebuttable presumption that Redigas of Watertown was part of the consent order firm and therefore experienced no injury as a result of the Dalco pricing practices, and should receive no refund in this proceeding. *See Warren Holding co./ Puritan Oil Co.*, 13 DOE ¶ 85,337 (1985).

B. Allocation of Refund Money

In the Proposed Decision, we suggested that the Dalco settlement fund be allocated to successful claimants who demonstrated injury based upon the volumetric methodology which has been used in a number of prior special refund proceedings. *See, e.g., Office of Enforcement,* 8 DOE ¶ 82,597 (1981). However, since the issuance of the Proposed Decision, we have decided to use a different, more focused method for allocating refunds among claimants in this case. As indicated in the Background section of this Decision and Order, the attachments to the PRO issued to Dalco set forth specific transactions with seven firms which allegedly resulted in overcharges. (These alleged overcharges are summarized by month and purchaser in Attachment I to the PRO.) The consent order expressly states that it is intended to settle the DOE's claims against Dalco with respect to these "specified transactions." Dalco Consent Order at ¶¶ 4 and 5. By using this information to allocate the consent order fund proportionally we can establish the appropriate potential refund for each eligible firm. The use of this methodology will result in refunds that more closely correspond to the actual injuries incurred by Dalco customers than would the use of a volumetric methodology. We recognize that the PRO and the ERA audit file do not provide conclusive evidence as to the identity of all allegedly overcharged parties or the amount of money they should receive in a Supart V proceeding. Nevertheless, as we have stated in other Decisions, the information contained in audit files can be used for guidance in fashioning are fund plan which corresponds more closely to the injuries experienced than would a distribution plan based solely on a volumetric approach. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984).

The potential refunds allocated under this methodology are set forth in the Appendix to this Decision and Order. The particular facts found in each refund application, including the degree of injury demonstrated by the claimant, will, of course, be used to determine the amount of money actually to be refunded.

In the Proposed Decision, we indicated our intention to establish a presumption of injury with respect to small claims by resellers. Under that presumption, resellers who purchased 50,000 gallons per month or less of Dalco propane would be presumed to have absorbed the alleged overcharges and would not be required to provide further evidence of injury in order to be eligible for a refund. This presumption was based on our belief that with small claims the cost to the firm of gathering evidence of injury could exceed the expected refund and that consequently, without simplified procedures, some injured resellers would be effectively denied opportunity to obtain a refund. We stil intend to adopt a small claims presumption in this proceeding. However, because we are no longer relying solely upon the volume of propane purchased to establish a refund amount, it is no longer appropriate to establish a threshold based upon a monthly purchase level. Instead, in accordance with recent Subpart V Decisions, those resellers (including refiners acting as resellers) who are eligible for a refund of $5,000 or less (or who wish to claim no more than this amount) will not be required to present detailed evidence of injury. *See Marion Corp.* This threshold will apply to refunds calculated for all eligible reseller applicants with the exception of spot purchasers. In view of the

presumption that spot purchasers were not injured by the alleged Dalco overcharges, no threshold will apply to applications filed by spot purchasers, since, regardless of the magnitude of their refund claims, all spot purchasers must demonstrate that they absorbed Dalco's alleged overcharges.

As we indicated in the Proposed Decision, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

C. Application for Refund Procedures

We have concluded that applications for refunds should now be accepted from parties who purchased Dalco propane during the consent order period and believe they have been injured by Dalco's pricing practices. Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.** *See* 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify that it pertains to the Dalco Consent Order Fund, Case No. HEF-0060.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue SW., Washington, DC. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application must indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying Dalco enforcement proceeding. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Dalco Petroeum, Inc. Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following subjects should be covered in each application:

A. Each applicant listed in the Appendix to this Decision and Order should certify that it purchased propane from Dalco during the consent order period and list its purchase volumes for each month of that period (November 1983—March 1974).[4]

B. Each applicant should specify how it used the Dalco propane—i.e., whether it was a reseller, or ultimate consumer.

C. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also

(i) State whether it maintained banks of unrecouped product cost increases from November 1, 1973 through January 27, 1981 and furnish OHA with quarterly bank calculations.

(ii) State whether it or any of its affiliates have filed any other applications for refund in which they have referred to their banks to demonstrate injury.

(iii) Submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

D. The applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is pending. *See* 10 CFR 205.9(d).

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Dalco Petroleum, Inc. pursuant to the Consent Order executed on September 30, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: June 4, 1986.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

Appendix

Firms Listed In Attachment I of The Dalco PRO as Allegedly Overcharged Dalco Propane Customers During The Audit Period.

	Potential refund amounts*
Kurth Skelgas	$1,108
North Central Public Service	31,946
Farmland Industries, Inc	24,675
AMOCO	214,178
Redigas of Watertown**	4,152
Superior	2,930
Pyramid Distribution	38,598
Total	317,587

*Rounded off to nearest dollar.
**Presumed to be ineligible.

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[4] Although refunds to these applicants will not be based on their purchase volumes, this information is necessary to establish eligibility. If it would be excessively difficult for an applicant to retrieve this information, the firm may fulfill this requirement by explaining why this information is not available and setting forth reasonable estimates of its purchase volumes during the consent order period. *See Marion Corp.*, 12 DOE ¶ 85,014 at 88,029 (1984).

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $40,000 obtained as a result of a consent order which the DOE entered into with Missouri Terminal Oil company (MTO), a reseller-retailer of refined petroleum products located in St. Louis, Missouri. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the MTO consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register.** All applications should refer to

Case Number HEF–0131 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by the DOE and Missouri Terminal Oil Company (MTO) which settled all claims and disputes between MTO and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period March 1, 1979, through July 31, 1979 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the MTO consent order funds was issued on April 14, 1986. 51 FR 13555 (April 21, 1986).

The Decision sets forth procedures and standards that the DOE has formulated to distrubute the contents of an escrow account funded by MTO pursuant to the consent order. The DOE has decided to accept Applications for Refund from firms and individuals that purchased motor gasoline sold by MTO during the consent order period. Eligible applicants include indirect customers as well as first purchasers. In order to receive a refund, a claimant will be required to submit a schedule of its monthly purchases of MTO motor gasoline and to demonstrate that it was injured by MTO's pricing practices. An indirect purchaser must also submit the name of its immediate supplier and indicate why it believes the motor gasoline was originally sold by MTO.

As the accompanying Decision and Order indicates, Applications for Refund may now be filed by customers that purchased motor gasoline sold by MTO during the consent order period. Applications will be accepted provided they are filed in duplicate and recieved no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: June 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

June 2, 1986.

Name of Firm: Missouri Terminal Oil Company
Date of Filing: October 13, 1983
Case Number: HEF–0131

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Missouri Terminal Oil Company (MTO). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to that consent order.

I. Background

MTO is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in St. Louis, Missouri. A DOE audit of MTO's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between March 1, 1979, and July 31, 1979, MTO committed possible pricing violations in its sales of motor gasoline.

In order to settle all claims and disputes between MTO and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, MTO and the DOE entered into a consent order on July 8, 1983. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that MTO does not admit that it violated the regulations.

Under the terms of the consent order, MTO deposited a total of $40,000, in two installments, into an interest-bearing escrow account for ultimate distribution by the DOE. The two payments of $20,000 were made on January 4, 1984, and January 11, 1985.[1]

[1] As of April 30, 1986, the total value of the MTO escrow account was $46,685.58.

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of an enforcement proceeding are set forth in 10 CFR Part 205, subpart V. The Subpart V procedures may be used in situations where the DOE is unable either to readily identify those persons who might have been injured by any alleged overcharges or to ascertain the amount of such injuries. For a more detailed discussion of Subpart V and the authority to fashion refund procedures, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On April 14, 1986, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that make a reasonable showing of injury as a result of the alleged overcharges in MTO's sales of motor gasoline during the consent order period. 51 FR 13555 (April 21, 1986). The PD&O stated that the basic purpose of a special refund proceeding is to made restitution for injuries that were experienced as a refund of acutal or alleged violations of the DOE regulations.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, copies of the PD&O were sent to various petroleum dealers associations. Comments were submitted on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia concerning the distribution of any funds remaining after refunds have been made to injured parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the MTO refund proceeding. Any procedures pertaining to the disposition of any monies remaining after this first stage will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE at 85,055. Therefore, it would be premature for us to address the issues raised by the states' comments at this time. Since no comments were received concerning the first-stage procedures, they will be adopted as proposed.

III. Refunds to Identifiable Purchasers

In the first stage of the MTO refund proceeding, we will distribute the funds in escrow to claimants that demonstrate that they were injured by the alleged

overcharges. In order to be eligible to receive a refund, a claimant will have to file an application and, with the three exceptions discussed below, show the extent to which injury resulted from the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order funds.

In this case we will adopt two rebuttable presumptions as well as findings regarding injury. These presumptions and findings have been used in many previous special refund cases. First, we will presume that purchasers of MTO motor gasoline that are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. Second, in the absence of compelling material, we will adopt a presumption that spot purchasers were not injured. In addition, we will make a finding that end-users or ultimate consumers of MTO motor gasoline whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Finally, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased MTO motor gasoline and passed the alleged overcharges associated with that product through to their end-user members. Prior OHA decisions provide detailed explanations of the bases of these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶ 85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the PD&O. 51 FR 13555 at 13556–58 (April 21, 1986). These presumptions and finding will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a claimant might make such a showing, it is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, and (ii) that market conditions did not permit it to pass on the increased costs to its customers in the form of higher prices.[2]

[2] Resellers or retailers that claim a refund in excess of $5,000 but which do not attempt to establish that they did not pass through the price increases will be eligible for a refund of up to $5,000 without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982).

A. Calculation of Refund Amounts

We will use a volumetric method to determine the refunds of eligible applicants. This method presumes that the alleged overcharges were spread equally over all the gallons of motor gasoline sold by MTO during the consent order period. Under the volumetric method, a claimant will be eligible to receive a refund equal to the number of gallons of MTO motor gasoline that it purchased during the consent order period times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.003505.[3] In addition, successful claimants will receive a proportionate share of the accrued interest.

We recognize that a particular purchaser could have absorbed a disproportionate share of the alleged overcharges. Any purchaser which can make such a showing may file a refund application based on such a claim.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweights the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DQE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

IV. Applications for Refund

Through the procedures described above, we will be able to distribute the MTO consent order funds as equitably and efficiently as possible. Accordingly, we will now accept Applications for Refund from individuals and firms that purchased motor gasoline sold by MTO between March 1, 1979, and July 31, 1979. Eligible applicants include subsequent repurchasers as well as first purchasers.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of MTO motor gasoline along with any relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the motor gasoline was originally sold by MTO;

(2) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(3) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) Whether the applicant is or has been involved as a party in DOE enforcement or private actions filed under Section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF–0131 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to Department of Energy by Missouri Terminal Oil Company pursuant to the Consent Order executed on July 8, 1983, may not be filed.

(2) All applications must be filed no later than 90 days after publication of

[3] This figure is computed by dividing the $40,000 received from MTO by the 11,411,630 gallons of motor gasoline sold by the firm during the consent order period.

this Decision and Order in the **Federal Register.**

Dated: June 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-13247 Filed 6-11-86; 8:45 am]

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Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a consent order fund of $27,571 to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Arkansas Valley Petroleum of Tulsa, Oklahoma.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case No. HEF-0029.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by Arkansas Valley Petroleum (Arkansas Valley) of Tulsa, Oklahoma. The Consent Order involves a particular audit period and a distinct consent order fund as set forth in the Proposed Decision. The Consent order settled possible pricing violations in Arkansas Valley's sales of motor gasoline to customers during the audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Arkansas Valley pursuant to the Consent Order. The DOE has tentatively decided that the consent order fund should be distributed to those customers of Arkansas Valley who establish that they were injured by Arkansas Valley's alleged overcharges. Such customers will receive refunds proportionate to the volume of motor gasoline they purchased from Arkansas Valley. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register,** and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: June 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 2, 1986.

Name of Firm: Arkansas Valley Petroleum
Date of Filing: October 13, 1983
Case Number: HEF-0029

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged or adjudicated violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement a proceeding to distribute the funds received pursuant to a Consent Order entered into by the DOE and Arkansas Valley Petroleum (Arkansas Valley) of Tulsa, Oklahoma.

I. Background

Arkansas Valley is a "reseller-retailer" of "motor gasoline," as these terms were defined in 10 CFR 212.31. An ERA aduit of Arkansas Valley's operations during the period March 1, 1979 through October 31, 1979 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputes between Arkansas Valley and the DOE regarding sales of motor gasoline during the audit period (hereinafter referred to as the consent order period), the firm entered into a Consent Order with the DOE on September 1, 1981. Under the terms of the Consent Order, the firm agreed to remit $27,571 to the DOE for deposit in an interest-bearing escrow account pending distribution by the DOE. The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. In addition, the Consent Order states that Arkansas Valley does not admit that it committed any such violations.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds where appropriate. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement,* 9 DOE ¶ 82,553 (1982); *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Arkansas Valley consent fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

We propose to establish a claims procedure whereby claimants who demonstrate that they were injured as a result of Arkansas Valley's pricing practices during the consent order period will be eligible to receive a refund.

A. Showing of Injury

We propose that claimants who resold petroleum products purchased from Arkansas Valleys be required to demonstrate that they did not pass on to their customers the price increases implemented by Arkansas Valley. Accordingly, in order to qualify for a refund, a reseller claimant (including retailers) must show that it would have maintained its prices for the product

purchased from Arkansas Valley at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased motor gasoline from Arkansas Valley, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); Tenneco Oil Co./Mid-Continent Systems, Inc. 10 DOE ¶ 85,009 (1982). In addition, a reseller will be required to show that it had "banks" of unrecovered increased product costs in order to demonstrate that it did not recover the increased costs associated with the alleged overcharges by increasing its prices.[1] The maintenance of banks will not, however, automatically establish injury. *See, e.g., Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982).

B. Applicants Claiming a Refund of $5,000 or Less

In the present case, we propose to adopt a presumption of injury which has been used in many previous special refund cases. We will presume that reseller applicants who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of motor gasoline from Arkansas Valley. For example, such firms may have limited accounting and data-retrival capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs or to show that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant, and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corp.* 12 DOE ¶ 85,014 (1984) (*Marion*). We propose to adopt such a procedure in this case. Therefore, any applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be elgible to receive a refund.[2]

C. Spot Purchasers

We further propose that resellers who made spot purchases from Arkansas Valley be ineligible to receive a refund, even a refund at or below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser tends to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of Arkansas Valley motor gasoline at increased prices unless it was able to pass through the full amount of the alleged overcharges to its own customers. *See Vickers*, 8 DOE at 85,396–97. Accordingly, in order to overcome the rebuttable presumption that it was not injured, a spot purchaser must submit evidence to establish that it was unable to recover the prices it paid for Arkansas Valley motor gasoline and did not have discretion as to where and when to make the purchase(s) upon which its refund claim is based.

D. End-users

We will not require end-users or ultimate consumers whose businesses are unrelated to the petroleum industry to make a detailed showing of injury. *See Texas Oil & Gas Corp.*, 2 DOE ¶ 85,069 at 88,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Id.* We have therefore concluded that end-users of Arkansas Valley motor gasoline need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased Arkansas Valley motor gasoline for consumption as fuel will not be considered end-users for the purpose of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985).

E. Calculation of Refund Amounts

We propose to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all the gallons of the consent order product(s) sold by a consent order firm. *See, e.g., Vickers.* To determine the per gallon volumetric factor, the consent order amount will be divided by the total volume of covered products which the firm sold during the consent order period.[3] Refunds will be calculated by multiplying the volumetric factor by the total amount of the consent order products purchased by the applicant during the consent order period. The interest that has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

As in previous cases, we propose to establish a minimum refund amount of $15 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1985).

Refund applications in the Arkansas Valley proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Arkansas Valley Consent Order, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

In the event that money remains after all first stage claims have been processed, undistributed funds could be disbursed in a number of different ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Arkansas

[1] Some of the motor gasoline sales covered by the Consent Order occurred subsequent to the amendment of the retailer price rule that eliminated the bank requirement for retailers. *See* 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) (effective July 15, 1979). Accordingly, retailers will not be required to submit bank information concerning any purchases of motor gasoline they may have made after July 15, 1979.

[2] As in prior cases, resellers whose calculated refund exceeds the threshold amount may elect to apply for a refund of $5,000 without being required to make a detailed demonstration of injury.

[3] We are awaiting additional information regarding the total volume of motor gasoline sold by Arkansas Valley during the consent order period so that we may calculate a precise per gallon volumetric factor. The volumetric factor will be included in the final Decision and Order, at which point potential claimants will be able to compute the refunds for which they may qualify.

Valley Petroleum pursuant to the Consent Order executed on September 1, 1981 will be distributed in accordance with the foregoing Decision.

[FR Doc. 86-13248 Filed 6-11-86; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $56,217.18 obtained as a result of a remedial order which the DOE issued to Propane Gas and Appliance Company (PGA), a retailer of refined petroleum products located in New Brockton, Alabama. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the PGA remedial order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF-0156 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a remedial order issued by the DOE to Propane Gas and Appliance Company (PGA) which found that the firm violated the federal price regulations in its sales of propane during the period November 1, 1973, through March 31, 1974 (audit period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the PGA remedial order funds was issued on April 4, 1986. 51 FR 12916 (April 16, 1986).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by PGA pursuant to the remedial order. The DOE has decided to accept Applications for Refund from firms and individuals that purchased propane from PGA during the audit period. Since PGA only sold propane on the retail market, all of the firm's customers were end users and will therefore only be required to submit schedules of their monthly purchases of PGA propane to demonstrate that they were injured by PGA's pricing practices.

As the accompanying Decision and Order indicates, Applications for Refund may now be filed by customers that purchased propane from PGA during the audit period. Applications will be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: June 3, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

June 3, 1986.

Name of Firm: Propane Gas and Appliance Company
Date of Filing: October 13, 1983
Case Number: HEF-0156

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a remedial order issued to Propane Gas and Appliance Company (PGA). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to that remedial order.

I. Background

PGA is a "retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in New Brockton, Alabama. An ERA audit of PGA's records for the period November 1, 1973, through March 31, 1974 (audit period), revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F, with respect to the firm's sales of propane.

As a result of the audit, ERA issued a Proposed Remedial Order (PRO) on April 6, 1978, which found that PGA's pricing practices had resulted in overcharges to its customers totaling $24,797.72. The order directed PGA to meet restitution for its pricing practices by refunding the total overcharge amount, plus interest, through a price rollback to its customers. After considering and rejecting PGA's objections to the PRO, OHA issued it as the final Remedial Order (RO) of the DOE on May 23, 1979. *Propane Gas and Appliance Co.*, 4 DOE ¶ 83,010 (1979). PGA then appealed the RO to the Federal Energy Regulatory Commission (FERC).

On January 22, 1982, FERC issued a final decision affirming the RO. *Propane Gas and Appliance Co.*, 18 FERC ¶ 61,084 (1982). In that decision, FERC also granted the DOE's request for a modification of the refund procedures outlined in the RO. This change was necessary since the advent of decontrol prevented the implementation of a price rollback to PGA's customers. Accordingly, PGA was subsequently required to deposit the overcharge amount, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE.[1]

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of an enforcement proceeding are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶82.597 (1981).

On April 4, 1986, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable showing of injury as a result of PGA's overcharges in its sales of propane during the audit period. 51 FR 12916 (April 16, 1986). The PD&O stated that the basic purpose of a special refund proceeding is to make

[1] PGA paid $56,217.18, including interest, into the escrow account on June 10, 1985. This amount represents the principal which will form the basis for refund calculations. As of April 30, 1986, the total value of the PGA escrow account was $60,293.64.

restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, copies of the PD&O were sent to various petroleum dealers associations. Comments were submitted on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia concerning the distribution of any funds remaining after refunds have been made to injured parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the PGA refund proceeding. Any procedures pertaining to the disposition of any monies remaining after this first stage will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE at 85,055. Therefore, it would be premature for us to address the issues raised by the states' comments at this time. Since no comments were received concerning the first-stage procedures, they will be adopted as proposed.

III. Refunds to Identifiable Purchasers

In the first stage of a special refund proceeding a claimant is generally required to demonstrate that it was injured by any actual or alleged overcharges. In this case, we are making a finding that end users or ultimate consumers of PGA propane whose business operations are unrelated to the petroleum industry were injured by PGA's overcharges. Prior OHA decisions provide detailed explanations of the basis of this finding. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶ 85,191 at 88,509–10 (1985). The rationale for its use was also fully explained in the PD&O. 51 FR 12916 at 12918 (April 16, 1986). Since, as a retailer, PGA only sold propane to ultimate consumers, we are therefore concluding that all of the firm's customers were injured by the overcharges. As a result, claimants in this proceeding will not be required to submit any detailed evidence of injury.

A. Calculation of Refund Amounts

We will use a volumetric method to determine the refunds of eligible applicants. This method presumes that the overcharges were spread equally over all the gallons of propane sold by PGA during the audit period. Under the volumetric method, a claimant will be eligible to receive a refund equal to the number of gallons of PGA propane that it purchased during the audit period times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.041963.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

We recognize that a particular purchaser could have incurred a disproportionate share of the overcharges. Any purchaser that can make a showing of disproportionate overcharge may file a refund application based on such a claim.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Urban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same prinicple applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

IV. Applications for Refund

We have determined that by using the procedures described above, we can distribute the PGA escrow funds as equitable and efficiently as possible. Accordingly, we will now accept Applications for Refund from individuals and firms that purchased propane from PGA between November 1, 1973, and March 31, 1974.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of propane from PGA during the period November 1, 1973, through March 31, 1974;

(2) Whether the applicant has previously received a refund, from any source, with respect to the overcharges identified in the ERA audit underlying this proceeding;

(3) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) Whether the applicant is or has been involved as a party in DOE enforcement or private actions filed under section 210 of the Economic Stablization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF-0156 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to Department of Energy by Propane Gas and Appliance Company pursuant to the Remedial Order issued on May 23, 1979, and modified by the Order of the Federal Energy Regulatory Commission issued on January 22, 1982, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: June 3, 1986.

George B. Breznay,

Director Office of Hearings and Appeals.

[FR Doc. 86-13249 Filed 6-11-86; 8:45 am]

BILLING CODE 6450-01-M

[2] This figure is derived by dividing the $56,217.18 received from PGA by the 1,339,673 gallons of propane sold by the firm during the audit period.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $3,800,000.00 (plus accrued interest) obtained as the result of a consent order between the DOE and Dorchester Gas Corporation (Dorchester). The funds will be distributed to refund applicants who purchased products other than crude oil from Dorchester during the settlement period (August 18, 1973 through January 31, 1976).

DATE AND ADDRESS: Applications for refund must be filed by September 10, 1986 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should be filed in duplicate and should display a conspicuous reference to Case Number HEF–0559.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director, or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures and standards that the DOE has formulated to distribute monies obtained from Dorchester Gas Corporation (Dorchester). Dorchester entered into a Consent Order to settle disputes regarding Dorchester's compliance with the federal refiner price and natural gas liquids regulations during the period August 18, 1973 through January 31, 1976. Under the terms of the Consent Order, Dorchester has remitted $3,800,000.00 which is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Dorchester settlement fund will be distributed through a two stage refund proceeding. The first stage will attempt to refund monies to customers who purchased Dorchester products during the settlement period. The specific requirements which an applicant must meet in order to receive a refund will vary depending on a number of factors (e.g. the size of the refund amount which the applicant is claiming and the applicant's position in the supply chain). These specific requirements are set out in Section II (B) of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons which they purchased from Dorchester. After meritorious claims are paid in the first stage, second-stage refund procedures may become necessary to distribute any remaining funds.

First-stage applications for refund will now be accepted. Applications for refund must be filed within 90 days from the date of publication of the Decision and Order in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. Applicants must submit two copies of their applications. All applications received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585. If an applicant considers any of the information contained in its application to be confidential, the applicant should submit two additional copies of its application in which the confidential information is deleted.

Dated: June 3, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

June 3, 1986.

Name of Case: Dorchester Gas Corporation
Date of Filing: December 27, 1984
Case Number: HEF–0559

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations. On December 27, 1984, the ERA requested that the OHA formulate and implement procedures to distribute $3,800,000.00 which it received pursuant to a consent order with Dorchester Gas Corporation (Dorchester).

This Decision contains the procedures which the OHA has formulated to distribute the Dorchester settlement fund. The requirements which an applicant must meet in order to be eligible for a refund appear at section II of this Decision. Since the requirements will vary depending on a number of factors specific to the applicant (e.g., the size of the refund amount which the applicant is claiming and the applicant's position in the supply chain), we have set out the specific requirements applicable to each type of applicant in section II(B). A claimant should take note of those requirements applicable to its particular circumstances. These specific requirements are followed, in section II(C), by a discussion of general requirements applicable to all Dorchester refund applicants.

I. Background

During the period covered by the Consent Order, Dorchester owned 100 percent of four gas processing plants and owned partial interests in four others.[1] As result of these activities, Dorchester was a "gas plant operator" within the meaning of 10 CFR 212.162, a "refiner" as defined in 10 CFR 212.31, and was subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150, Subpart L and 10 CFR Part 212, Subparts E and K. These regulations governed the maximum prices that could lawfully be charged in the sales of various products which Dorchester sold including motor gasoline, distillates, natural gas liquid products, diesel fuel, and pentane.

The ERA conducted an audit of Dorchester and determined that Dorchester may have violated the DOE price regulations. As a result, the ERA issued a Proposed Remedial Order (PRO) to Dorchester. In order to settle the claims made in the PRO and other potential claims by the DOE, Dorchester and the DOE entered into a Consent Order on February 9, 1984. 49 FR 8673 (March 8, 1984), *finalized at* 49 FR 18773 (May 2, 1984). The Consent Order resolved all issues regarding Dorchester's compliance with the federal refiner price and NGL regulations during the period August 18, 1973 through January 31, 1976 (the settlement period). The Consent Order explicitly does not cover Dorchester's compliance with regulations relating to crude oil. Pursuant to the Consent Order, Dorchester refunded the sum of $3,800,000 to the DOE. These monies have been deposited in an escrow account pending ultimate disposition by the DOE.

[1] Dorchester owned the Cargray, Hooker, Texon, and Woodlawn Plants and percentages of the Acadia (20.6%), Carthage (41.2%), Port (25%), and Sterling Plants. The locations of these plants are as follows: Acadia Plant, Acadia Parish, Louisiana; Cargray Plant, Carson County, Texas; Carthage Plant, Panola County, Texas; Hooker Plant, Texas County, Oklahoma; Port Plant, Jefferson County, Texas; Sterling Plant, Sterling County, Texas; Texon Plant, Reagan County, Texas; and Woodlawn Plant, Harrison County, Texas.

On April 4, 1986 the OHA issued a Proposed Decision and Order setting forth a tentative plan for distributing the Dorchester settlement fund. 51 FR 12919 (April 16, 1986). In the Proposed Decision, we described a two-stage process for disbursing refunds. During the first stage we proposed to distribute funds to identifiable purchasers of Dorchester products who could demonstrate that they were injured by the firm's pricing practices during the settlement period. We stated that if funds remain after the first stage is completed, a second-stage refund procedure may become necessary.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments to the proposed refund procedures were solicited. Comments were filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia concerning the distribution of any funds remaining after refunds have been made to identifiable parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the Dorchester refund proceeding. The procedures used to distribute any monies remaining after this first stage will necessarily depend on the size of the fund. Therefore, it would be premature for us to address the States' comments at this time. Since no comments were received concerning the first-stage procedures, they will be adopted as proposed.

II. Refund Procedures

This Section of our Decision will outline the presumptions which we are adopting and the showing which each type of refund applicant must make in order to receive a refund. The general presumptions we are adopting are set out in Subsection (A). The filing requirements specific to each type of applicant appears in Subsection (B). The general requirements of all applicants are contained in Subsection (C).

(A) Presumptions

In this refund proceeding, we will adopt certain presumptions which will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider the refund applications in the most efficient manner possible. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Dorchester's sales of petroleum products during the settlement period and that refunds should therefore be made on a pro rata or volumetric basis. In the absence of better information, such a volumetric refund assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. *American Pacific International*, 14 DOE ¶ 85,158 at 88,293 (1986) (*American Pacific*).

Under the volumetric refund approach we are adopting, a claimant will be eligible to receive a refund equal to the number of gallons purchased times the per gallon refund amount, plus accrued interest. In the present case, we have set the per gallon refund amount at $0.00945 per gallon. We derived this figure by dividing the consent order amount ($3,800,000.00) by an estimate of the number of gallons of covered products other than crude oil which Dorchester sold during the settlement period (402,168,755).[2] However, we also recognize that the impact on an individual purchaser might have been greater, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon and Gasoline Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

We also will adopt a number of presumptions concerning injury. These presumptions will excuse certain categories of refund applicants from proving that they were injured by Dorchester's alleged overcharges, thus enabling certain applicants to simplify their refund applications. We will discuss these presumptions and the showing which each type of applicant must make in Section II(B) below.

(B) Specific Application Requirements for Each Category of Refund Appliants

From our experience with Subpart V proceedings, we believe that potential claimants will fall into the following categories: (1) End-users, e.g., Dorchester employees who purchased motor gasoline at the Cargray Plant Filling Station; (2) regulated non-petroleum entities which used Dorchester products in their businesses or cooperatives which sold Dorchester products to their members; and (3) refiners, resellers, or retailers who resold Dorchester products.

[2] This gallonage estimate is based on information contained in the ERA's implementation petition and in the Dorchester audit file. These materials did not contain information for every month of the settlement period or for every Dorchester plant. Although we believe that our estimate reasonably accounts for these additional volumes, we recognize the possibility that we may have underestimated the volumes which Dorchester sold. If we receive refund applications based on volumes exceeding our estimate, it may become necessary to adjust the per gallon refund amount.

(1) Refund Applications of End-Users

We will adopt a funding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by Dorchester's alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final price of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Therefore, end-users of Dorchester products need only document that they were ultimate consumers of a specific amount of Dorchester products to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications of Cooperatives and Regulated Firms

Firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement will not be required to demonstrate injury in this case. Although such firms, e.g., public utilities and agricultural cooperatives, generally would pass overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a full explanation of how they plan to accomplish this restitution, and to explain how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We note, however, that a cooperative's sales of Dorchester products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications of Resellers, Retailers and Refiners

(a) *Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less.* We will adopt a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by Dorchester's pricing practices. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,224–25 (1982). With small claims, the cost to the firm of gathering evidence of injury to support a refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an

opportunity to obtain a refund. Under the small claims presumption, a claimant seeking a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Dorchester products it purchased during the settlement period. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984).

(b) *Refiners, Resellers and Retailers Seeking Refunds Greater Than $5,000.* Unlike small claims applicants, a firm which claims a refund in excess of $5,000 will be required to provide a detailed demonstration of its injury in addition to providing purchase volume information. It will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, a claimant must show that market conditions would not permit it to pass through those increased costs. *See Panhandle Eastern Pipeline Co./I.V. Cole Petroleum Co.*, 10 DOE ¶ 85,051 at 88,265 (1983). For periods in which the DOE regulations did not require retailers to compute cost banks, a retailer will only be required to show that market conditions prevented it from recovering increased costs. Such a showing might be made through a demonstration of lowered profit margins, decreased market share, or depressed sales volume during the period of purchases from Dorchester. *American Pacific*, 14 DOE at 88,295.

(C) General Refund Application Requirements

In addition to the specific requirements outlined above, all applicants must meet a number of general requirements in order to receive a refund. Every applicant must file a written application for refund, signed by the applicant. The application must make reference to the Dorchester Gas Special Refund Proceeding (Case No. HEF-0559). Each applicant must submit a monthly purchase schedule for each product purchased from Dorchester during the settlement period (August 18, 1973 through January 31, 1976). However, if the applicant is identified as a Dorchester purchaser in the Appendices to this Decision, the applicant may be able to rely on the purchase volumes contained therein. In order to rely on the volumes in the Appendices the applicant must: (1) Limit its claim to the volumes and product s contained in the Appendices; (2) certify that it is unable to or it would be unduly burdensome for it to determine its actual purchase volumes; and (3) certify that the volumes attributed to it in the Appendices appear reasonably accurate. Applicants identified in the Appendices who are required to prove injury, e.g. resellers claiming refunds over $5,000 should note that the Appendices make no determination as to injury. Therefore, such applicants may rely on the Appendices only to prove purchase volumes and must make separate showings of injury.

Firms which made indirect purchases of Dorchester products may also apply for refunds. If an applicant did not purchase directly from Dorchester but believes that products it purchased from another firm originated with Dorchester, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of Dorchester products passed through Dorchester's alleged overcharges to its own customers.

We will establish a rebuttable presumption that claimants who made only spot purchases from Dorchester were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases and generally would not have made spot market purchases from Dorchester at increased prices unless they were able to pass through the full amount of the selling price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396-97 (1981). Therefore, a firm which made only spot purchases from Dorchester will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured as a result of its spot purchases from Dorchester.

Each refund applicant should furnish us with the name, position or title, and telephone number of a person whom we may contact for additional information. If the applicant is affiliated or associated with Dorchester in any manner, it must so indicate and provide information explaining the nature of its relationship with the firm. If the applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved. If the applicant is a firm which did not actually purchase from Dorchester, but is a successor to a Dorchester customer, the applicant must provide evidence establishing that it, rather than Dorchester's former customer, is entitled to a refund. Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief."

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must indicate this belief and submit two additional copies of its application from which the information has been deleted. Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Dorchester Gas Corporation pursuant to the Consent Order executed on February 9, 1984, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: June 3, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX A.—PROPANE 12/73-1/75

Customer	Gallons
Bultman Inc	701,775
Carl Losson	360,145
Champlin Refining Co	799,602
Cities Service	835,393
Cities Service Oil	840,000
Col Kan Propane Service	198,026
Engel Oil Co	671,163
Evans Oil Co	244,006
Farmland Ind	2,444,118
Gruver Oil & Gas	980,188
Home Petroleum	1,784,958
Home Petroleum (Union)	5,809,135
Hosier Oil Co	171,280
J.K. McBee	256
J.S. Skelly Fuel	195,901
L.E. Oliver	1,243
L.G. Vanderwork	1,406,669
Larry (L.F.) Witt	229
Logan Gas	271,717
Mangum Oil & Gas	287,311
Marion Corp	1,708,044
Mendenhall Oil	21,690
Petrol. Trading & Transport	1,785,144
Phillips Petroleum	3,015,624
Phillips Petroleum Corp	2,272,985
Ramey Butane	218,952
Sauvage Gas Co	1,138,452
Sauvage Gas Co	7,084,801
Schaapveld Oil Co	480,370
Schroeder Oil Co	4,053
Shamrock Butane	350,102
Shamrock Products	1,730,690
Swanee Petroleum	1,678,152
Texas Eastman	982,084
Tigrett Butane	855,907
Top O'Texas	177,488

APPENDIX A.—PROPANE 12/73–1/75—Continued

Customer	Gallons
Travis Oil Co	9
Tutcher Majic Gas	22,051
UPG, Inc	730,141
W.R. Hanson	876
Wanda Petroleum	130,005
Warren Petroleum	240,234
Williams Bros	424,035
Wilson Petroleum Co	1,148,559

NOTE.—This Appendix identifies propane purchasers from the following plants: Cargray, Hooker, Texon, Woodlawn, and Sterling. If a purchaser's name appears more than once, this is due to its purchase from more than one plant.

APPENDIX B.—BUTANE 12/73–1/75

Customer	Gallons
Normal Butane	
Bultman Inc	15,701
Carl Losson	449,826
Celanese Chemical	15,511,615
Champlin Pet	21,903
Diamond Shamrock	881,868
Diamond Shamrock	200,976
Gruver Oil & Gas	25,049
Home Pet Corp	9,037,035
Home Petroleum	364,981
J.S. Skelly Fuel	80,526
L.E. Oliver	34
Liquid Pet. Corp	6,483,951
Mobil Oil Corp	989,784
Phillips Pet. Corp	1453
Phillips Pet	2,529,063
Ramey Butane	9,516
Schaapveld Oil Co	61,425
Shamrock Products	279,794
Tigrett Butane	32,242
Top O Texas	9,947
UPG Inc	272,974
Wanda Petroleum	177,143
Warren Petroleum	18,627
Williams Bros	208,444
ISO-Butane	
Diamond Shamrock	6,532,962
Diamond Shamrock	567,394
Home Pet Corp	4,968,040

NOTE.—This Appendix identifies butane purchasers from the following plants: Cargray, Hooker, Texon, Woodlawn, and Sterling. If a purchaser's name appears more than once, this is due to its purchase from more than one plant.

APPENDIX C.—PENTANE AND A–B OIL (12/73–1/75)

Customer	Gallons
Normal Pentane	
Atlas Processing Company	2,873,385
Diamond Shamrock	7,338,251
Permian Corp	4,942,440
Phillips Petroleum	2,669,611
Trans South	473,174
UPG Inc	431,214
ISO-Pentane	
Deep South (Kennesaw)	85,822
Permian Corp	7,304
Phillips Petroleum	243,833
Shell Chemical Co	292,260
A–B Oil	
Diamond Shamrock	67,610
Kerr McGee	199,677
Permian	981,751

NOTE.—This Appendix identifies pentane purchases from the Cargray, Hooker, Texon, and Woodlawn plants, and A–B oil purchases from the Cargray plant.

APPENDIX D.—GASOLINE-CARGRAY PLANT—8/73–10/74

Customer	Gallons
Air Speed Oil	8,748,976
Al's Bait Shop	634,059
Cargray Filling Station	60,390
Curt's Oil Co	2,052,416
Diamond Shamrock	128,870
Ed Flood Oil Company	41,288
Greendyke Transport	8,503
Home Oil Company	1,277,035
Hoover Supply	10,180
J.C. Penney	167,620
M.L.J. Inc	168,245
Silverton Oil	2,700
Steere Tank	3,451
Ted Lokey Oil Co	30,759
Triangle Refineries	2,815,490
Utility Oil	190,766
Williams Bros	521,203

[FR Doc. 86-13250 Filed 6-11-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00228; FRL-3030-7]

Open Meeting of State-FIFRA Issues Research and Evaluation Group (SFIREG)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATES: Monday and Tuesday, July 14 and 15, 1986, beginning at 8:30 a.m. each day and ending prior to 12 noon on July 15, 1986.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703–486–1234).

FOR FURTHER INFORMATION CONTACT:

By mail: Philip H. Gray, Jr., Office of Pesticide Programs (TS–766C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7096).

SUPPLEMENTARY INFORMATION: This will be the twenty-fourth meeting of the full Group. The tentative agenda thus far includes the following topics:

1. Action items for the March 1986 meeting of SFIREG.
2. Regional reports.
3. Working Committee reports.
4. Other topics which may arise.

Dated: June 5, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-13264 Filed 6-11-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-766-DR]

Major Disaster and Related Determinations; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–766–DR), dated June 5, 1986, and related determinations.

DATE: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

Notice: Notice is hereby given that, in a letter of June 5, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania resulting from severe storms and flooding beginning on or about May 30, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Robert J. Adamcik of the Federal Emergency Management Agency to act as the Federal

Coordinating Officer for this declared disaster.

I do hereby determine the following area of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster and is designated eligible as follows:

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.

Allegheny County for Individual Assistance.

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-13238 Filed 6-11-86; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-764-DR]

Amendment to Notice of a Major-Disaster Declaration; South Dakota

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA-764-DR), dated May 3, 1986, and related determinations.

DATE: June 6, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of South Dakota, dated May 3, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1986:

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Aurora, Beadle, Douglas, Faulk, Hutchinson, Jerauld, and Sanborn Counties for Public Assistance.

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-13239 Filed 6-11-86; 8:45 am]

BILLING CODE 6718-02-M

[Docket No.: FEMA-REP-3-DE-1]

The Delaware Radiological Emergency Response Plans Site-Specific for the Artificial Island Generating Station

ACTION: Certification of FEMA findings and determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Delaware submitted its plans relating to the Artificial Island Generating Station (formerly Salem/Hope Creek) to the Director of FEMA Region III on February 23, 1981, for FEMA review and approval. On September 27, 1982, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. However, subsequent to the State's submission, areas requiring action by the Delaware Department of Public Safety were identified and reported as being resolved in a January 15, 1986, FEMA finding. Included in this evaluation is a review of exercises conducted on April 8, 1981, October 13, 1982, October 26, 1983, and October 29, 1985, in accordance with § 350.9 of the FEMA rule; and, a report of the public meeting held on May 27, 1981, in accordance with §350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that the State and local plans and preparedness for the Artificial Island Generating Station are adequate to protect the health and safety of the public living in the vicinity of the plant. The offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. However, while there is a public alert and notification (A&N) system in place and operational, this approval is conditioned upon FEMA's verification of the A&N system in accordance with the criteria of NUREG-0654/FEMA-REP-1, Rev. 1, Appendix 3; and the "Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants" (FEMA-REP-10).

FEMA will continue to review the status of offsite plans and preparedness associated with the Artificial Island Generating Station in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-3-DE-1 maintained by the Regional Director, FEMA Region III, 105 South 7th Street, Philadelphia 19106.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86-13177 Filed 6-11-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Federal Employees; Disclosure of Home Addresses to Exclusive Representatives Under the Federal Service Labor-Management Relations Statute

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of opportunity to file amicus briefs in certain unfair labor practice proceedings in which agency management has refused to provide exclusive representatives with the names and home addresses of all unit employees and requested pursuant to section 7114 of the Statute.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested agencies, labor organizations, and other interested persons to file amicus briefs on significant issues of law common to a number of cases pending before the Authority involving the refusal of agency management, in the face of requests made pursuant to section 7114(b)(4) of the Statute, to provide labor organizations with the names and home addresses of employees in units of exclusive recognition.

DATE: Amicus briefs submitted in response to this notice will be considered if received by July 14, 1986.

ADDRESS: All briefs shall be captioned "Home Addresses Cases, Amicus Brief," and shall contain separate, numbered headings for eash issue discussed. An original and four (4) copies of each amicus brief, with any enclosures, on 8½ x 11 inch size paper, shall be addressed to Jacqueline R. Bradley, Executive Director, FLRA Attn: Home Addresses Cases, 500 C Street SW., Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: Harold Kessler, Director of Case Management, Federal Labor Relations Authority, (202) 382-0715.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority currently has before it a number of cases involving the refusal of agency management to provide labor organizations with the names and home addresses of employees in units of exclusive recognition. Some of these cases are before the Authority because of exceptions to decisions issued by Administrative Law Judges in unfair labor practice (ULP) cases. Three other cases involve Authority decisions which were awaiting judicial review when the Authority sought and was granted remand. Remand was sought in order for

the Authority to address whether disclosure of the names and home addresses of unit employees requested by each of the unions under section 7114(b)(4) of the Statute was or was not subject to the "routine use" exception of the Privacy Act, 5 U.S.C. 552a(b)(3), and such other issues arising under the Statute as might be appropriate. The "routine use" issue had not been addressed by the Authority in its decisions. In another case, *American Federation of Government Employees, Local 1760* v. *FLRA*, No. 85–4144 (2d Cir. March 24, 1986), reviewing 19 F.L.R.A. No. 108, the United States Court of Appeals for the Second Circuit denied the Authority's motion to have the case remanded and issued a decision reversing the Authority's decision. The court reversed the Authority's conclusion that the agency did not commit a ULP by refusing to furnish the names and home addresses of unit employees to their exclusive representative as requested, and remanded the case to the Authority for further action.

The authority has identified several cases, listed below, which address significant issues of law common to a large number of these cases and finds it appropriate to provide for the filing of amicus briefs addressing these issues. These cases include the following:

Department of Health and Human Services, Social Security Administration, Case No. 2–CA–50222;

Department of Health and Human Services, Social Security Administration, Case No. 2–CA–50188;

Department of the Air Force, Scott Air Force Base, Illinois, Case No. 5–CA–40232;

Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, Case No. 1–CA–40290;

Department of Health and Human Services, Social Security Administration, Case No. 4–CA–40452,

Farmers Home Administration Finance Office, St. Louis, Missouri, 19 F.L.R.A. No. 21 (Case No. 7–CA–30560) (This case is before the Authority pursuant to the Authority's remand motion, which was granted by the U.S. Court of Appeals for the District of Columbia Circuit.);

Defense Mapping Agency Aerospace Center, St. Louis, Missouri, 19 F.L.R.A. No. 85 (Case No. 7–CA–20482) (This case is before the Authority pursuant to the Authority's remand motion, which was granted by the U.S. Court of Appeals for the Eighth Circuit.);

Philadelphia Naval Shipyard, 19 F.L.R.A. No. 107 (Case No. 2–CA–40243) (This case is before the Authority pursuant to the Authority's remand motion, which was granted by the U.S. Court of Appeals for the District of Columbia Circuit);

National Labor Relations Board Union and National Labor Relations Board, Office the General Counsel and the Board, Case No. 0–NG–900 (involving the negotiability of one proposal which would require management to furnish the exclusive representative with the names and home addresses of all unit employees on an annual basis).

The Authority will receive and consider amicus briefs from all interested agencies, labor organizations, and other interested persons concerning the issues relevant to these cases. Among these issues are the following:

I. Is a labor organization entitled, under section 7114(b)(4) of the Statute, to the names and home addresses of the unit employees for whom it is the exclusive representative?

II. What standards are to be applied in determining whether or when a labor organization needs the names and home addresses of unit employees in order to communicate adequately with the employee it is responsible for exclusively representing; that is, when are the names and home addresses of unit employees "necessary" within the meaning of section 7114(b)(4) of the Statute?

Some of the Administration Law Judges who have issued decisions concerning this issue found that other traditional means of communication available to labor organizations, such as bulletin boards and handouts, were insufficient and that home addresses were necessary to enable the exclusive representatives to communicate adequately with the employees they represent. Without using subjective measurements, how can the adequacy of these means of communication be evaluated? Is adequacy a valid test?

III. Is disclosure of the names and home addresses of unit employees to their exclusive representatives precluded by the provisions of the Privacy Act?

The Privacy Act limits the disclosure of any information contained in an agency "record" within a "system of records that is retrieved by reference to an individual name or some other identifier." The Act contains two major exceptions relevant to this issue.

A. Court decisions involving the disclosure of information from personnel files maintained by the Federal government, in discussing both Privacy Act and Freedom of Information Act considerations, often indicate the need to balance any infringement of the individual's privacy rights against the public interest in disclosing such information. This balancing test is embodied in exemption (b)(6) of the Freedom of Information Act, 5 U.S.C. 552(b)(6). The Authority has applied this balancing test in other cases where information was sought by exclusive representatives.

(1) How should such a balance be weighed in determining whether the names and home addresses of unit employees are discloseable to their exclusive representative?

B. The Privacy Act, 5 U.S.C. 552a(a)(7), defines a "routine use" as "the use of such record for a purpose which is compatible with the purpose for which it is collected." The Office of Personnel Management (OPM) maintains the personnel records of Federal employees, which would be the most readily identifiable source for employees' names and home addresses. OPM regulations define the routine uses of its personnel records. One routine use is the disclosure of "information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions." 47 FR 16490–16491 (April 16, 1982).

(1) Is the disclosure of unit employees' names and home addresses to an exclusive representative a "routine use" within these terms?

(2) If names and home addresses may be disclosed as a routine use, may the disclosing agency place any limitations on the use of this information?

(3) Must the disclosing agency first determine that names and home addresses are "relevant and necessary" to the labor organization's duties as an exclusive representative within the terms of the routine use regulations in order to be entitled to disclose such information?

(4) To what extent must a labor organization, at the time of its request, supply the disclosing agency with an explanation as to why it believes that names and home addresses are "relevant and necessary" to the labor organization's duties within those same terms? May an agency determine that names and home addresses are always relevant and necessary to the exclusive representative's duties or must such determination be made on a case by case basis? May such a determination be made by the Authority?

(5) What is the relationship between the standard to be used in determining whether information is "necessary"

under section 7114(b)(4) of the Statute and the standard to be used in determining whether information is "relevant and necessary" under the routine use regulations issued by the Office of Personnel Management?

(6) Where an agency's determinations that the requested information is not relevant and necessary under the routine use regulations become the subject of a subsequent ULP complaint, what standard should the Authority apply in reviewing such determinations?

Dated: June 9, 1986.

For the Authority.

Jacqueline R. Bradley,

Executive Director.

[FR Doc. 86-13288 Filed 6-11-86; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-009498-006.

Title: Atlantic Container Line Agreement.

Parties:

The Cunard Steam-Ship Company, plc

International Transport (ICT) B.V.

Compagnie General Maritime

Rederiaktiebolaget Soya

Aktiebolaget Svenska Amerika Linien

Rederiaktiebolaget Transatlantic

Synopsis: The proposed amendment would modify the scope of the agreement to include ports and points in Mexico and increase the permitted capacity of certain vessels from 44,000 to 55,000 deadweight tons. It would also allow Compagnie General Maritime to maintain an individual common carrier operation to serve that portion of the trade to/from and via ports on the U.S. Atlantic and Gulf coasts from South Carolina through Texas, inclusive.

Agreement No.: 224-010953.

Title: Yamashita Shinnihon/Stevedoring Services of America Terminal Agreement.

Parties:

Yamashita Shinnihon Steamship Co., Ltd. (Y-S Line)

Stevedoring Services of America (SSA)

Synopsis: The proposed agreement would permit SSA to provide certain container terminal services for containers to be loaded onto or discharged from container vessels owned, operated, chartered or otherwise controlled by Y-S Line in Puget Sound Ports on Y-S Line's Far East/North America Pacific Coast regular service.

Agreement No.: 224-010957.

Title: Port of Seattle Container Terminal Service Agreement.

Parties:

Stevedoring Services of America (Contractor)

Orient Overseas Container Line, Ltd. (Carrier)

Synopsis: The proposed agreement would permit the Contractor to provide and perform container terminal services, at Terminal 18 Marine Terminal facility, located at 11th Avenue, SW., in the Port of Seattle. The Carrier agrees to use Contractor's services for containers to be loaded onto or discharged from the container vessels owned, operated, chartered and controlled by the Carrier in the Puget Sound Ports on their Far East/North America Pacific coast regular service. The term of the agreement shall be for five (5) years.

Agreement No.: 224-010959.

Title: Port of Seattle Container Terminal Service Agreement

Parties:

Stevedoring Services of America (Contractor)

Neptune Orient Lines, Ltd. (Carrier)

Synopsis: The proposed agreement would permit the Contractor to provide and perform container terminal services, at Terminal 18 Marine Terminal facility, located at 11th Avenue, SW., in the Port of Seattle. The Carrier agrees to use Contractor's services for containers to be loaded onto or discharged from the container vessels owned, operated, chartered and controlled by the Carrier in the Puget Sound Ports on their Far East/North America Pacific coast regular service. The term of the agreement shall be for five (5) years.

Dated: June 9, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-13294 Filed 6-11-86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 86-11]

Implementation of "Neutral Container Rule" by U.S. Atlantic-North Europe Conference; Order Granting, in Part, Motion To Modify Order of Investigation and Hearing

By Order of Investigation and Hearing served April 4, 1986 (April Order), the Commission initiated this proceeding to investigate the implementation of the neutral container system by the U.S. Atlantic-North Europe Conference (ANEC), shippers, and container leasing companies. The first ordering paragraph identified eight issues to be addressed in the investigation. ANEC was named Respondent and several leasing companies, shippers, and the Department of Justice (DOJ) were named Protestants.

ANEC has now filed a Motion requesting that the Commission modify the April Order by adding the following three issues to the first ordering paragraph:

9. Whether the neutral container system has been used as an unjust or unfair device or means to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable, in violation of section 10(a)(1) of the 1984 Act;[1]

10. Whether a container leasing company can be found in violation of section 10(a)(1) of the 1984 Act where a particular application of the neutral container system in which it is involved would result in a shipper obtaining transportation for property at less than the rates or charges that would otherwise be applicable; and

11. Whether any person whose activities have been found unlawful under section 10(a)(1) of the 1984 Act should be ordered to cease and desist from such activities.

In addition, ANEC has requested that the eight shippers and DOJ, who were named "Protestants" in the April Order, not be allowed to participate in this proceeding unless they petition for and are granted leave to intervene. The Commission's Bureau of Hearing Counsel and the Protestant leasing companies filed Replies to the Motion.

ANEC believes that the Commission's prior statements [2] indicate that the

[1] Section 10(a)(1), 46 U.S.C. app. 1709(a)(1), states that no person may: Knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable.

[2] ANEC refers to the Commission's order denying Interpool Ltd.'s Petition for Order to Show Cause, served February 18, 1986, and the April Order.

development of a complete factual record concerning the neutral container system is critical to this proceeding and that such an investigation would also address the practices of the container leasing companies. ANEC contends, however, that the April Order fails to comport with the Commission's intentions and will consequently result in an unfair and unbalanced proceeding.

Proposed Issue 9 is thus intended to examine whether the neutral container system has operated in such a way as to violate section 10(a)(1) of the Act and to allow the relevant facts to be obtained from shippers and leasing companies, in addition to carriers. ANEC contends that the arrangements between neutral container leasing companies and shippers, to which carriers are not privy, are crucial to an understanding of the neutral container system.

Proposed Issue 10 raises the question of whether a container leasing company can violate section 10(a)(1). ANEC maintains that it is clear that a shipper can violate this section, but concedes that it is less clear whether a non-shipper involved in the same transaction can also violate the provision. Proposed Issue 11 raises the question of whether a cease and desist order should issue if a shipper or leasing company were found in violation of section 10(a)(1).

In addition, ANEC believes that the eight shippers presently named as Protestants should not be parties to this proceeding unless they petition for and are granted intervention. ANEC implies that their presence is unnecessary since all documents and information concerning arrangements between shippers and leasing companies will be in the possession of the leasing companies. ANEC further suggests that the DOJ be allowed to participate in this proceeding only if it petitions to intervene.

In the alternative, ANEC submits that the Commission should withdraw the April Order and let the parties pursue their own remedies, including, of course, the filing of complaints with the Commission.

Hearing Counsel agrees with ANEC that facts regarding implementation of the neutral container system as a whole are critical. It further states that addition of the three proposed issues will result in the container leasing companies participating as respondents and suggests that this will produce a more "even-handed" investigation. Hearing Counsel opposes, however, ANEC's suggestions concerning the participation of shippers and DOJ.

The Protestant container leasing companies oppose ANEC's Motion, believing that the April Order will result in a balanced investigation. They further contend that Issues 5 and 6 of the Order [3] adequately inquire about the conduct of shippers and leasing companies in the neutral container system.

The leasing companies also submit that they are not regulated entities and that possible violations of the law by leasing companies is not an appropriate subject of inquiry by the Commission. They note that section 10(a)(1) only applies to persons who "directly or indirectly . . . obtain . . . ocean transportation." They contend, however, that leasing companies sell their services to carriers and/or shippers and that such activity does not constitute the purchase or "obtaining" of ocean transportation.

In sum, the leasing companies assert that ANEC will have the opportunity to present all relevant arguments and evidence it has regarding the operation of the neutral container system in the course of addressing issues 5 and 6. They also contend that the three proposed issues are phrased in such a way that they bring into question their conduct as container leasing companies which is not properly subject to the Commission's jurisdiction.

As to ANEC's concerns about the status of shippers in this proceeding, the leasing companies contend that it is unimportant whether they are designated as witnesses or as parties, because, in any event, there will be considerable evidence from shippers. Lastly, the leasing companies believe that were the Commission to adopt ANEC's alternative position and drop this proceeding, it would simply be postponing the inevitable.

Discussion

ANEC's concerns about DOJ and one shipper, Eastman Kodak Co., being named "Protestants" have been resolved by subsequent events. Both have filed motions to withdraw from this proceeding. These will be considered by the Presiding Administrative Law Judge.

As to the remaining seven shippers who were named Protestants, we see no need to modify their present status or limit their participation in the proceeding. Their interest in the basic issues raised is apparent from their timely submission of comments in response to the predecessor Petition for an Order to Show Cause. They have not indicated any dissatisfaction with their designation as Protestants. Moreover, involving them early on in the proceeding should facilitate shipper input as to the actual operation of the neutral container system.

ANEC's principal contention is that the April Order would become "more balanced" by inclusion of its three proposed issues. Issue 9 would inquire into whether the neutral container system has been used as an unjust or unfair device or means to obtain or attempt to obtain ocean transportation for property at less than the rates of charges that would otherwise be applicable, *i.e.*, in violation of section 10(a)(1). It is directed at the conduct of shippers and container leasing companies. Issue 9 is the obverse of Issue 5, which addresses ANEC's prior involvement in the neutral container system. Issue 10 raises the question of whether, as a matter of law, a neutral container leasing company could violate section 10(a)(1) in the context of the neutral container system. Issue 11 raises the question of whether anyone found to have violated section 10(a)(1) should be ordered to cease and desist such activity.

The Commission has decided to include Issues 9 and 10 as part of this proceeding. These issues could already be considered within the scope of the April Order. Nonetheless, they are consistent with the Commission's objectives in this proceeding and, to the extent that they clarify the issues, they may serve to facilitate a more fully developed record concerning the operation of the neutral container system.

The Commission does not believe it is appropriate, however, to include Issue 11, *i.e.*, whether a cease and desist order should issue to anyone found to violate section 10(a)(1). No potential "violaters" of this section have been identified who could be named as respondents. There is, therefore, no one against whom to direct a cease and desist order. The Shipping Act and elemental notions of due process require that anyone against whom an action will be taken be given notice and opportunity for a hearing. If, during the course of this proceeding, it appears that specific shippers and/or container leasing companeis may have operated in violation of the 1984 Act, they can be made the subject of this investigation, by amendment, or of a subsequent investigation.

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[3] These state:

Issue 5. Whether ANEC's prior granting of concessions to users of neutral containers violated sections 10(b)(4), 10(b)(11), and 10(b)(12) of the 1984 Act; and

Issue 6. Whether ANEC's failure to include in its tariffs on file with the Commission past rules, regulations, practices, or concessions with regard to use of neutral containers violated section 8(a) of the Act.

Therefore, it is ordered, That the first ordering paragraph of the Order of Investigation and Hearing served April 4, 1986 in this proceeding is amended by the addition of the following two issues:

9. Whether the neutral container system has been used as an unjust or unfair device or means to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable, in violation of section 10(a)(1) of the 1984 Act; and

10. Whether a container leasing company can be found in violation of section 10(a)(1) of the 1984 Act where a particular application of the neutral container system in which it is involved would result in a shipper obtaining transportation for property at less than the rates or charges that would otherwise be applicable; and

It is further ordered, That the "Motion of the U.S. Atlantic-North Europe Conference for Modification of Order of Investigation and Hearing" filed April 22, 1986 in this proceeding is denied in all other respects.

By the Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-13295 Filed 6-11-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Allied Bankshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating now the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Allied Bankshares, Inc.*, Thomson, Georgia; to engage *de novo* through its subsidiary, Financial Data Dimensions, Inc., Thomson, Georgia, in data processing and data transmission services, and facilities to other financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Western Security Financial Corporation*, Salem, Oregon; to engage *de novo* in data processing activities.

Board of Governors of the Federal Reserve System, June 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13286 Filed 6-11-86; 8:45 am]

BILLING CODE 6210-01-M

The Chase Manhattan Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 7, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York, and Chase Manhattan National Holding Corporation, New York, New York; to acquire 100 percent of the voting shares of Continental Bancor, Inc., Scottsdale, Arizona, and thereby indirectly acquire Continental Bank, Scottsdale, Arizona.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Bancorp, Inc.*, Naperville, Illinois; to merge with Bancorp of Mundelein, Inc., Mundelein, Illinois, and thereby indirectly acquire Bank of Mundelein, Mundelein, Illinois. Comments on this application must be received not later than July 3, 1986.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Clin-Ark Bankshares, Inc.*, Clinton, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of First National Bank, Clinton, Arkansas.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Banks of Colorado, Inc.*, Denver, Colorado; to acquire 100 percent of the voting shares of American National Bank of Aurora, Aurora, Colorado. Comments on this application must be received not later than June 27, 1986.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Zions Utah Bancorporation*, Salt Lake City, Utah; to acquire up to 100 percent of issued and outstanding shares of Mesa Bank, Mesa, Arizona.

Board of Governors of the Federal Reserve System, June 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13287 Filed 6-11-86; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0558]

Modifications to Federal Reserve Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Modifications to Federal Reserve Bank services.

SUMMARY: The Board has (1) adopted a proposal to modify the procedures used by Federal Reserve Banks to recover the value of float generated in automated clearing house ("ACH") operations due to nonstandard holiday closings, and (2) approved a proposal to establish a standard holiday schedule to be followed by Federal Reserve Banks.

DATE: The modifications to ACH float recovery procedures will take effect on April 1, 1987; the standard Reserve Bank holiday schedule will take effect on January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Florence M. Young, Adviser (202-452-3955) Division of Federal Reserve Bank Operations; Joseph R. Alexander, Attorney, Legal Division (202-452-2489); or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202-452-3544).

SUPPLEMENTARY INFORMATION:

Background

For the past several years, the Federal Reserve has made continuous efforts to reduce float in the nation's payments system. As part of these efforts, on November 18, 1985, the Board proposed to reduce float in check and ACH transactions generated as a result of nonstandard holiday closings (state or local holidays not observed on a regional or national basis). 50 FR 47752 (Nov. 20, 1985). At the same time, the Board also proposed to reduce the financial risks to the Federal Reserve by changing procedures for handling ACH credit transactions on days that the originator is closed, and a proposal to establish a standard holiday schedule for the Federal Reserve Banks.

With this action, the Board is adopting in modified form the proposal for the reduction of ACH float and approving the Reserve Banks' proposal for a uniform holiday schedule. In a related action today (Docket No. R-0544), the Board approved the proposal regarding check float. The Board has decided to defer action with respect to reducing ACH risks pending consideration of broader risk issues that were published for comment in May, 1985. Docket No. R-0515B, 50 FR 21135 (May 22, 1985).

ACH Float

In ACH transactions, float may be created if a party to a transaction is closed on the date the transaction is to be settled. In such cases, the Federal Reserve may not be able to debit the appropriate account at the same time that credit is passed.[1] Some of this float is generated as a result of nonstandard holidays (state or local holidays not observed on a regional or national basis).

Currently, the Federal Reserve recovers most ACH float attributed to nonstandard holiday closings through the use of "as of" adjustments made to originators' accounts. Originators are also given the option of paying for the float that results from being closed on the settlement date. These procedures have enabled the Federal Reserve to keep nonstandard holiday float to a daily average of approximately $2 million.

These procedures, however, place the entire burden of the recovery on originators of ACH transactions. The National Automated Clearing House Association ("NACHA") indicated to the Board that it is often difficult for originators to pass float costs back to their customers, and that the current procedures therefore discourage small- and medium-size institutions from beginning to originate ACH transactions. Accordingly, the Board proposed a change to the procedures for recovering ACH float arising because one of the parties to an ACH debit transaction (originator, receiver, Reserve Bank) is closed.

The Board also proposed a change to the Treatment of ACH credit transactions when one of the parties to the transaction is closed that was designed to minimize the risks to the Federal Reserve System that arise because the Federal Reserve treats ACH credit transactions as final on the settlement date.

Most of the commenters responding to these proposals supported the proposed treatment of ACH debit transactions. Substantial issues were raised, however, with respect to the treatment of ACH credit transactions, with commenters expressing the opinion that the Board should not attempt to address these issues in isolation. Rather, the commenters urged the Board to defer action on this proposal pending its consideration of the larger ACH risk issues that were published for comment in May, 1985, *See* Docket No. R-0515B, 50 FR 21,135 (May 22, 1985). With respect to the proposal for treating ACH debits on nonstandard holidays, approximately 16 percent of the commenters opposed it for various reasons: one felt that the proposal was too complex and would cause reconcilement problems, while another thought that the float burden should be placed on the originator as the only party that can control the generation of ACH transactions.

After analysis of these issues the Board has decided to

1. Defer action on ACH credit transactions pending resolution of the larger issues involving ACH risk, and

2. Adopt in modified form the proposal regarding ACH debit transactions.

Under the modified proposal concerning debit transactions adopted by the Board, if an originator of an ACH debit transaction is closed on a nonstandard holiday, the Reserve Bank will credit the originator's account as though the institution were open. If a receiver of an ACH debit transaction is closed on a nonstandard holiday, the Reserve Bank will debit the receiver's account as though the institution were open or assess the cost of the float through an explicit charge or an as-of adjustment. Nevertheless, if, after consultation with its Reserve Bank, an institution still objects to receiving debits on mandatory nonstandard holidays, the Reserve Bank will not charge the institution on such days, but will use the current procedures for recovering the ACH float that results.

Reserve Bank Holiday Schedule

Several commenters to previous float reduction proposals had recommended that the Federal Reserve should observe a standard holiday schedule. These commenters indicated that a standard holiday schedule would reduce the number of occasions when one Federal Reserve office was open and another closed, and, therefore, would reduce the uncertainty as to whether they would or would not be credited for their deposits. In response to these concerns, the Board proposed to adopt the following uniform holiday schedule for all Reserve Banks beginning in 1987:

[1] In ACH transactions, credits and debits resulting from the same transaction would normally be posted on the same day. In credit transactions, the originator's account is debited and the receiver's account is credited; these entries are generally treated as final. In a debit transaction, the originator's account is credited and the receiver's account is debited; these entries are treated as provisional.

All Saturdays,
All Sundays,
New Year's Day (January 1)
Martin Luther King's Birthday (third Monday in January),
Washington's Birthday (third Monday in February),
Memorial Day (last Monday in May),
Independence Day (July 4),
Labor Day (first Monday in September),
Columbus Day (second Monday in October),
Veterans' Day (November 11),
Thanksgiving Day (fourth Thursday in November), and
Christmas Day (December 25).

It was also proposed that if a fixed holiday (such as Christmas) falls on a Saturday, the holiday would be observed on the previous Friday; if it falls on a Sunday, the holiday would be observed on the following Monday.[2]

All of the 54 comments addressing this issue supported a standard holiday schedule for Reserve Banks. The respondents believed that adoption of such a schedule by Reserve Banks would provide substantial economic benefits to the nation's payments mechanism by eliminating some of the uncertainty surrounding the crediting of cash letters sent to Reserve Banks, allowing depository institutions to experience more even workflows, and providing customers more timely access to their funds. Several commenters did suggest that Reserve Banks not close on the Friday prior to a Saturday holiday, but instead observe the holiday on that Saturday or the following Monday. These respondents indicated that most states do not observe a Saturday holiday on the prior Friday, and, therefore, most banks would be required to remain open under state law. They also believed that closing Reserve Banks on Friday would place an unnecessary hardship on the banking industry and its customers, saying, for example, that Friday, December 31, would be a very important business day for business customers.

The Board agrees that the banking industry and the nation's payment mechanism would be better served by not observing Saturday holidays on the preceding Fridays, and has modified the proposal accordingly.

[2] This holiday schedule is standard, not uniform. It will be followed by all offices of the Federal Reserve Banks with one exception: the Federal Reserve Bank of Atlanta's New Orleans office will continue to close on Mardi Gras.

By order of the Board of Governors of the Federal Reserve System June 6, 1986.
William W. Wiles,
Secretary of the Board.
[FR Doc. 86-13220 Filed 6-11-86; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Oncologic Drugs Advisory Committee

Date, time, and place. July 17 and 18, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, July 17, 9 a.m. to 1:15 p.m.; open public hearing, 1:15 p.m. to 2:15 p.m., unless public participation does not last that long; open committee discussion, 2:15 to 5:15 p.m.; July 18, open committee discussion, 8:30 a.m. to 3:40 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cancer treatment.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss on July 17: (1) NDA 19-557, etoposide for oral use in small cell lung cancer (SCLC) and supplemental NDA 18-768, etoposide for use by injection in SCLC; and (2) Supplemental NDA 17-970 Nolvadex (tamoxifen) as a single agent adjuvant in breast cancer. On July 18, the committee will discuss: (1) Requirements for data on survival for approval of cancer drug NDA's; and (2) Possible investigational studies on tamoxifen in nonmalignant conditions.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to cetain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session

may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 5, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-13221 Filed 6-11-86; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting:

New Orleans District Office, chaired by Robert D. Bartz, District Director. The topics to be discussed are Irradiated Foods, Health Fraud, and Product Tampering.

DATE: Wednesday, June 25, 1986, 1 p.m. to 3 p.m.

ADDRESS: New Orleans District Office, 4298 Elysian Fields Ave., New Orleans, LA 70122.

FOR FURTHER INFORMATION CONTACT: Barbara L. Lloyd, Consumer Affairs Officer, Food and Drug Administration, 4298 Elysian Fields Ave., New Orleans, LA 70122, 504-589-2420.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: June 5, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-13222 Filed 6-11-86; 8:45 am]

BILLING CODE 4160-07-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6659-A2 and AA-6717-A2]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Choggiung Limited for approximately 14,285 acres. The lands involved are in the vicinity of Portage Creek and Dillingham, Alaska.

Seward Meridian, Alaska

T. 13 S., R. 50 W.
T. 14 S., R. 50 W.
T. 15 S., R. 50 W.
T. 14 S., R. 51 W.
T. 14 S., R. 52 W.
T. 17 S., R. 53 W.
T. 11 S., R. 54 W.
T. 14 S., R. 57 W.

A notice of the decision will be published once a week for four (4) consecutive weeks in the **ANCHORAGE TIMES.** Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until July 14, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-13303 Filed 6-11-86; 8:45 am]

BILLING CODE 4310-JA-M

[OK NM 58054]

New Mexico; Reinstatement of Terminated Oil and Gas Lease

Under the provisions of 43 CFR 3108.2-3, Francis Keough petitioned for reinstatement of oil and gas lease OK NM 59054 covering the following described lands located in Blaine County, Oklahoma:

T. 18 N., R. 11 W., I.M.
Sec. 31: NE¼NW¼
Containing 40.00 acres, more or less

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $10.00 per acre per year and royalties shall be at the rate of 16⅔ percent, computed on a sliding scale four percentage points greater than the competitive royalty schedule attached to the lease. Reimbursement for cost of the publication of this notice shall be paid by the lessee. Reinstatement of the lease will be effective as of the date of termination, January 1, 1986.

Dated: June 2, 1986.

Tessie R. Anchondo

Chief, Adjudication Section.

[FR Doc. 86-13304 Filed 6-11-86; 8:45 am]

BILLING CODE 4310-FB-M

[M 66958]

Opening of Public Lands in Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Conveyance and order providing for opening of public land in Blaine Co., Montana.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

DATES: At 9 a.m. on August 4, 1986, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, including the mining laws, but not from exchange, by the Notice of Realty Action published in the **Federal Register** on March 13, 1986 (51 FR 8713). The segregation terminated on issuance of the deed on May 19, 1986. No minerals were transferred by either party in the exchange.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands

Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657–6082.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described surface estate was conveyed to Bradford B. Tilleman:

Principal Meridian, Montana

T. 34 N., R. 21 E.,
Sec. 1, SW¼;
Sec. 2, E½SE¼;
Sec. 11, NE¼NE½.
Containing 280 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following described land in Blaine County, Montana:

Principal Meridian, Montana

T. 34 N., R. 21 E.,
Sec. 2, SW¼, W½SE¼;
Sec. 3, NE¼SE¼;
Sec. 11, NW¼NE¼.
Containing 320 acres.

3. The values of federal public land and the nonfederal land in the exchange were both appraised at $37,000.00 and $33,500.00, respectively. A cash equalization payment of $3,500.00 was made to the United States.

4. At 9 a.m. on August 4, 1986, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws.

Dated: June 4, 1986.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources, Montana State Office.

[FR Doc. 86–13233 Filed 6–11–86; 8:45 am]

BILLING CODE 4310-DN-M

[NM 32341]

Realty Action: Land Exchange in San Juan, McKinley, Sandoval and Rio Arriba Counties, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty action (NORA) on proposed land exchange.

SUMMARY: This notice is to advise the public that the Albuquerque District of the Bureau of Land Management (BLM) is proposing to amend the NORA that was published in the **Federal Register** on December 16, 1982 (pages 56409–56412) by adding additional public lands to those that may be included in the exchange.

SUPPLEMENTARY INFORMATION: The BLM has determined that the additional public lands listed in this notice may be suitable for disposal. Authority for the exchange is section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1716), Pub. L. 97–287 (Malpais Land Exchange Act) and Pub. L. 97–459 (Indian Land Consolidation Act).

The purpose of this exchange is to acquire unoccupied lands owned by the Navajo Tribe for inclusion in the Bureau's multiple-use management programs, and to eliminate most of the unauthorized occupancy of public lands by members of the Navajo Tribe.

About 15,000 acres of public land are included in this notice, but not all of the tracts will be conveyed to the Navajo Tribe. The acreage exchanged will be adjusted to equal the value of the lands received. Adjustments will also be made to exchange as many tracts occupied by Navajo Indians as possible.

This exchange proposal is consistent with the Bureau's currently approved land use plans for the areas involved.

Publication of this notice segregates the public lands from the operation of the public land laws, including the mining laws but excluding the mineral leasing laws. Duration of the segregation is for a period of 2 years or completion of the exchange, whichever occurs first.

Additional information, including the terms and conditions applicable to this exchange may be obtained from the original Notice of Realty Action or from either the BLM, Albuquerque District Office, 505 Marquette NW., Albuquerque, New Mexico 87197 or the BLM, Farmington Resource Area Office, Caller Service 4104, Farmington, New Mexico 87499.

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

Legal description	Parcel acreage
T. 18 N., R. 3 W.,	
Sec. 16, NW¼	160
Sec. 21, NW¼, SW¼	320
Sec. 28, NW¼	160
Sec. 29, SE¼	160
T. 19 N., R. 3 W., Sec. 28, NW¼	160
T. 17 N., R. 4 W., Sec. 17, NE¼	160
T. 18 N., R. 4 W.,	
Sec. 9, NE¼	160
Sec. 20, NW¼	160
Sec. 24, SE¼	160
T. 19 N., R. 4 W.,	
Sec. 7, lots 2, 3, SE¼, NW¼, NE¼, SW¼	156.56
Sec. 9, SE¼	160
Sec. 24, NW¼	160
Sec. 34, SW¼	160
T. 20 N., R. 4 W.,	
Sec. 18, N½ NE¼, SW¼ NE¼, N½ SE¼ NE¼, W½ SW¼ SE¼ NE¼, N½ SE¼ SE¼ NE¼	150
Sec. 19, lots 1, 2, E½ NW¼	156.74
Sec. 27, SW¼	160
Sec. 28, NE¼	160
Sec. 34, N½	320
T. 18 N., R. 5 W.,	
Sec. 9, NW¼	160
Sec. 14, NE¼	160
Sec. 18, NE¼	160
T. 19 N., R. 5 W.,	
Sec. 7, SE¼	160

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO—Continued

Legal description	Parcel acreage
Sec. 20, E½ NW¼	80
T. 20 N., R. 5 W.,	
Sec. 4, SW¼	160
Sec. 8, NE¼	160
Sec. 15, N½ SE¼, SW¼ SE¼, N½ SE¼ SE¼, N½ S½ SE¼ SE¼	150
Sec. 18, NW¼	160
Sec. 27, NE¼, NW¼	320
Sec. 30, SW¼	160
T. 17 N., R. 6 W.,	
Sec. 11, NW¼	160
Sec. 22, NW¼	160
Sec. 23, NW¼	160
Sec. 25, NW¼, SE¼	320
Sec. 27, SW¼	160
Sec. 32, NE¼	160
T. 18 N., R. 6 W., Sec. 26, NE¼	160
T. 19 N., R. 6 W., Sec. 6, SE¼	160
T. 20 N., R. 6 W., Sec. 4, SW¼	160
T. 21 N., R. 6 W., Sec. 31, lots 3, 4, E½, SW¼	160.16
T. 22 N., R. 6 W.,	
Sec. 6, SE¼	160
Sec. 7, NE¼	160
T. 18 N., R. 7 W., Sec. 14, NW¼	160
T. 19 N., R. 7 W., Sec. 12, lots 1, 2, W½ NE¼	157.34
T. 20 N., R. 7 W., Sec. 2, NW¼	160
T. 21 N., R. 7 W.,	
Sec. 32, NW¼	160
Sec. 33, SW¼	160
T. 23 N., R. 7 W., Sec. 8, SW¼	160
T. 21 N., R. 8 W.,	
Sec. 11, NW¼	160
Sec. 14, SE¼	160
T. 23 N., R. 8 W., Sec. 22, SEW¼	160
T. 22 N., R. 9 W.,	
Sec. 9, NE¼	160
Sec. 27, NW, SW¼	320
Sec. 28, SE¼	160
Sec. 34, NE¼	160
T. 24 N., R. 9 W., Sec. 31, SW¼	160
T. 25 N., R. 9 W.,	
Sec. 10, NW¼	160
Sec. 23, NW¼	160
Sec. 29, SE¼	160
T. 16 N., R. 10 W.,	
Sec. 6, SE¼	160
Sec. 18, NE¼	160
T. 22 N., R. 10 W.,	
Sec. 27, SE¼	160
Sec. 30, NE¼, NW¼	320
Sec. 34, SW¼	160
T. 23 N., R. 10 W.,	
Sec. 6, lots 3, 4, 5, SE¼ NW¼	157.91
Sec. 10, E½	160
Sec. 27, NE¼	160
T. 25 N., R. 10 W.,	
Sec. 5, SE¼	160
Sec. 21, NE¼ NE¼	40
Sec. 35, NE¼, SE¼	320
T. 15 N., R. 11 W., Sec. 6, lots 3, 4, 5, SE¼ NW¼, SE¼	316.23
T. 16 N., R. 11 W., Sec. 22, NE¼, SW¼	320
T. 22 N., R. 11 W., Sec. 22, NE¼	160
T. 25 N., R. 11 W.,	
Sec. 7, lots 1, 2, NE¼, E½ NW¼	319.90
Sec. 31, lots 1, 2, 3, E½ W½	320.72
T. 26 N., R. 11 W., Sec. 25, NE¼	160
T. 28 N., R. 11 W., Sec. 8, lots 3, 4, S½ SW¼	132.33
T. 13 N., R. 12 W.,	
Sec. 10, SW¼	160
Sec. 14, NW¼, SE¼	320
Sec. 22, NW¼	160
Sec. 24, NW¼	160
T. 25 N., R. 12 W., Sec. 24, N½	320
T. 14 N., R. 13 W., Sec. 20, E½ SE¼	80
T. 23 N., R. 13 W., Sec. 28, SW¼	160
T. 28 N., R. 13 W., Sec. 7, lots 1, 2, 3, 4, 5	132.55
T. 29 N., R. 13 W., Sec. 28, S½ SW¼ NE¼ SW¼	5
T. 16 N., R. 16 W.,	
Sec. 26, SW¼	160
Sec. 28, NE¼	160
T. 14 N., R. 18 W., Sec. 24, SW¼	160
T. 12 N., R. 20 W., Sec. 26, S½	320
T. 15 N., R. 20 W.,	
Sec. 12, NE¼	160
Sec. 16, SE¼ SE¼	40
Sec. 19, lots 3, 4, E½ SW¼	159.73
T. 16 N., R. 21 W., Sec. 10, lots 5, 6, 7, 8	156.42

For a period of 45 days after publication of this notice, interested parties may submit comments to the Albuquerque District Manager at the above address. Any adverse comments will be evaluated by the BLM State Director in Santa Fe, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

Dated: May 30, 1986.

L. Paul Applegate,

District Manager.

[FR Doc. 86-13235 Filed 6-11-86; 8:45 am]

BILLING CODE 4310-FB-M

Wyoming; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 A.M., June 4, 1986.

Sixth Principal Meridian

T. 56 N., R. 96 W.

The plat showing a subdivision of original lots 2 and 3, Sec. 3, T. 56 N., R. 96 W., Sixth Principal meridian, Wyoming, was accepted May 28, 1986.

This supplemental plat was prepared to meet certain administrative needs of this Bureau.

T. 53 N., R. 71 W.

The plat, in two sheets, representing the dependent resurvey of the Thirteenth Standard Parallel North, through R. 71 W., the east and north boundaries, a portion of the west boundary, and the subdivisional lines, and the subdivision of certain sections, T. 53 N., R. 71 W., Sixth Principal Meridian, Wyoming, Group No. 431, was accepted May 28, 1986. T. 41 N., R. 107 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 10 and 11, T. 41 N., R. 107 W., Sixth Principal Meridian, Wyoming, Group No. 446, was accepted May 28, 1986.

These surveys were executed to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: June 5, 1986.

Richard L. Oakes,

Chief Cadastral Surveyor for Wyoming.

[FR Doc. 86-13234 Filed 6-11-86; 8:45 am]

BILLING CODE 4310-22-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: June 9, 1986.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC

(1) and (2) Capitol Milk Producers Cooperative, Inc., 8920 Whiskey Bottom Road, Laurel, MD 20707;
(3) 424 East Patrick St., Frederick, MD 21701;
(4) Jim Davis, 424 East Patrick St., Frederick, MD 21701.

(1) and (2) Farmers Grain Cooperative, Box 166, 417 2nd Street, Colo, IA 50056;
(3) 417 2nd Street, Colo, IA 50056;
(4) Douglas D. Dersheid, 417 2nd Street, Colo, IA 50056.

(1) and (2) North Pacific Canners & Packers, Inc., P.O. Box 1800, Lake Oswego, OR 97034;
(3) 18053 SW Lower Bonnes Ferry Rd., Durham, OR 97062
(4) Bill Chaplin, P.O. Box 1800, Lake Oswego, OR 97034.

(1) and (2) Northwest Agricultural Cooperatives Association, Inc., P.O. Box 1, Ontario, OR 97914;
(3) 920 Southeast Ninth Ave., Ontario, OR 97914;
(4) Ted Hoots, P.O. Box 1, Ontario, OR 97914

(1) and (2) Rockingham Poultry Marketing Cooperative, Inc., POB 275, Broadway, VA 22815;
(3) Coop Drive, Broadway, VA 22815;
(4) June M. Fahrney, POB 275, Broadway, VA 22815

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13271 Filed 6-11-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19; Sub 113X]

The Baltimore and Ohio Railroad Co.; Exemption; Abandonment in Fayette County, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, et seq., the abandonment by The Baltimore and Ohio Railroad Company of 0.41 miles of track, the remaining portion of its Coal Lick Run Branch, in Uniontown, Fayette County, PA, subject to standard labor protective conditions.

DATES: This exemption will be effective on July 14, 1986. Petitions to stay must be filed by June 23, 1986, and petitions for reconsideration must be filed by July 2, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-19 (Sub-No. 113X) to:

(1) Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to: T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: June 4, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13272 Filed 6-11-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. CBS Inc.; Proposed Modification of Final Judgment

Notice is hereby given that CBS Inc. has asked the United States District Court for the Central District of California to modify the Final Judgment in *United States* v. *CBS Inc.*, Civil Action No. 74–3599–RJK (C.D. Cal.). The United States has tentatively consented to the modification. The Complaints in this case and two companion cases, *United States* v. *American Broadcasting Companies, Inc.*, Civil Action No. 74–3600–RJK (C.D. Cal.) and *United States* v. *National Broadcasting Company, Inc.*, Civil Action No. 74–3601–RJK (C.D. Cal.), were filed in 1974. Each complaint alleged that the defendant network had violated sections 1 and 2 of the Sherman Act by combining with the television stations it owned and with its affiliated stations to monopolize and restrain trade in television entertainment programs exhibited on its television network during prime time hours. It also alleged that each network had violated section 2 of the Sherman Act by monopolizing television entertainment programs exhibited on its network during prime time hours.

In 1980 CBS and the Government agreed to a settlement of the CBS case and a Final Judgmnt was entered. The Final Judgment: (1) Limits the amount of programming that CBS may produce internally; (2) prohibits CBS from acquiring the right to engage in non-network distribution of independently produced programs or to share in profits from such distribution; and (3) regulates the terms and conditions of CBS program purchases from independent producers. In addition, Section IX of the Final Judgment provides that if a Final Judgment or modification is entered in the cases against ABC or NBC that contains provisions different from the provisions in the CBS Final Judgment, then CBS may apply to the Court and shall be granted a modification of the CBS Judgment as may be necessary to prevent CBS from being placed at a competitive disadvantage with respect to ABC or NBC.

CBS proposes to modify Section V of its decree, which section limits the amount of prime time programming that it produces internally to make it identical to section V in the ABC decree and the NBC decree as modified in 1984. The ABC and NBC decrees permit them to gradually increase over time the amount of internally produced prime time programming. Under the proposed modification, CBS would be allowed to increase its in-house production of prime time entertainment programs at the same time those increases become effective for ABC and NBC.

The United States has filed a memorandum with the Court setting forth the reasons it has tentatively consented to the modification. Copies of the complaint, proposed modification, motion papers, all comments submitted and all further papers filed with the Court will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 7233, United States Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202/633–2481), and at the Office of the Clerk of the United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California 90012. Copies of any of these materials may be obtained from the Legal Procedures Unit upon request and payment of the fee set by the Department of Justice regulations. Interested persons may submit comments concerning this matter by sending them within sixty days (60) to Kevin R. Sullivan, Assistant Chief, Communications and Finance Section, U.S. Department of Justice, Safeway Building, 521 12th Street, NW., Room 504, Washington, DC 20530 (telephone: 202/724–5944).

Dated: June 6, 1986.

Joseph Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–13257 Filed 6–11–86; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research Act of 1984 Joint Venture To Conduct Research on the Continuous Casting of Steel Sheet

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("the Act"), the parties to the project described below have filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the project and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below. The parties to this venture are: Armco Inc., Bethlehem Steel Corporation, Inland Steel Company, Weirton Steel Corporation.

The purpose of the venture is to conduct research and development activities directed to the continuous casting of steel sheet (up to 0.20 inches thick) by introducing molten steel into the space between a pair of opposed, rotating water-cooled rolls and to license any resulting inventions or data.

Joseph W. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–13258 Filed 6–11–86; 8:45 am]

BILLING CODE 4410–01–M

Proposed Termination of Final Judgment; Joy Manufacturing Co.

Notice is hereby given that Joy Manufacturing Company ("Joy"), as the successor to defendants Western Precipitation Corporation and International Precipitation Company, has filed with the United States District Court for the Central District of California a motion to terminate the final judgment in *United States* v. *Western Precipitation, et al.*, Civil No. 4677–OC; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on August 14, 1945) alleged that defendants, along with five foreign firms named as co-conspirators but not defendants, conspired to divide international markets and fix prices and, using United States and corresponding foreign patents, among other things, maintained a worldwide cartel in electrostatic precipitators and component parts thereof. The judgment (entered on April 11, 1946) enjoins each defendant from: (1) Further performing under, maintaining, or reviving any of several specific agreements between or among defendants and named co-conspirators which were cancelled by the judgment, or any amendment or supplement thereto; (2) entering into or maintaining any agreement or understanding with any other defendant or any co-conspirator (i) to allocate or divide territories or markets for electrical precipitators by, among other things, licensing or assigning electical precipitation patents, (ii) to fix prices for such products, (iii) to exclude or restrict others from the electrical precipitator market, (iv) to prevent or restrict importation or exportation of electrical precipitators, and (v) to refrain from

competing in the electrical precipitator market; (3) asserting or attempting to assert certain United States electrical precipitation patents; and (4) bringing, threatening to bring, or maintaining any suit for infringement of, or collecting royalties under, certain United States or corresponding foreign electrical precipitation patents.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Joy's motion papers, all papers filed by other defendants and their successors in interest, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 7233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (telephone 202/633-2481), and at the Office of the Clerk of the United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California 90012. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the sixty day period established by court order, and will be filed with the court. Comments should be addressed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone 202/724-7966).

Dated: June 9, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-13259 Filed 6-11-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Louisiana

This notice announces the beginning of a new Extended Benefit Period in Louisiana, effective on May 18, 1986, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit Period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on May 3, 1986, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on May 18, 1986. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law.

The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on June 5, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-13317 Filed 6-11-86; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-133]

Pacific Gas and Electric Co.; Draft Environmental Statement for Decommissioning of Humboldt Bay Power Plant Unit No. 3; Extension of Comment Period

On April 28, 1986 (51 FR 15853), the NRC published a Notice entitled "Availability of the Draft Environmental Statement for Decommissioning of Humboldt Bay Power Plant, Unit No. 3." The comment period for this Draft Environmental Statement (DES) was to expire on June 16, 1986. Mr. Michael R. Sherwood of the Sierra Club and Mr. James S. Adams of the Redwood Alliance, both from California, have requested a sixty day extension of the comment period. The need for a thorough review by the public and the importance of the decommissioning issue was cited as justification for the requested extension. We agree that public comment on this DES is important and, therefore, an extension of sixty (60) days is granted. The extended comment period now expires August 15, 1986.

Comments submitted after this date will be considered if it is practical to do so but assurance of consideration cannot be given except as to comments submitted before this date.

Comments on the DES from interested members of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, 4000 MNBB.

Dated at Bethesda, Maryland this 6th day of June, 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B.

[FR Doc. 86-13300 Filed 6-11-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary Systems; Meeting

The ACRS Subcommittee on Auxiliary Systems will hold a meeting on June 26, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Thursday, June 26, 1986—8:00 A.M. until 12:45 P.M.

The Subcommittee will discuss: (1) The status of the Appendix R compliance, (2) differing professional opinions among the Staff, (3) need for research in the fire protection area, (4) updates on the progress being made in the Sandia experimental program on fire protection, (5) inspection activities to determine compliance with the fire protection requirements, and (6) recent experiences associated with the inadvertent actuation of fire protection systems.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact one of the above named individuals one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 5, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-13229 Filed 6-11-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Exemption

I

Sacramento Municipal Utility District (the licensee) is the holder of Facility Operating License No. DPR-54 which authorizes the operation of the Rancho Seco Nuclear Generating Station (the facility) at steady-state power levels not in excess of 2772 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Sacramento County, California. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R identifies specific fire protection requirements in fifteen subsection, A through O. This exemption relates to Subsection III.L which requires, in part, that the alternative or dedicated shutdown capability provided for a specific fire area be able to achieve could shutdown conditions within 72 hours without the use of offsite power.

III

By letter dated February 28, 1985, as supplemented by letter dated November 7, 1985, the licensee requested exemption from the specific requirement of III.L which requires that alternative or dedicated shutdown be able to achieve cold shutdown conditions within 72 hours. The acceptability of the request is addressed below.

Subsection III.L.1 of Appendix R to 10 CFR Part 50 states, in part, that the alternative shutdown capability shall be able to achieve cold shutdown conditions within 72 hours. Further, Subsection III.L.3 of Appendix R states that the alternative shutdown capability must accommodate post-fire conditions where offsite power is available and where offsite power is not available for 72 hours. Thus, the alternative shutdown capability must be able to achieve cold shutdown conditions within 72 hours, independent of offsite power. The licensee has requested an exemption from the 72-hour requirement for achieving cold shutdown independent of offsite power.

The design of the Rancho Seco Nuclear Generating Station is such that pressurizer spray capability is dependent upon operation of the reactor coolant pumps which, in turn, require offsite power. Without pressurizer spray availability, depressurization of the reactor and subsequent cooldown would be determined by the rate of heat loss from the pressurizer to the containment environment. Additionally, the licensee has imposed a further restriction to cooldown in order to avoid formation of steam in the upper head. Using this cooldown restriction and a conservative analysis, the licensee calculated that 205 hours would be required to achieve cold shutdown conditions, assuming offsite power was unavailable.

For plant cooldown, the auxiliary feedwater (AFW) system in conjunction with the atmospheric dump valves provides initial decay heat removal independent of offsite power. The AFW system utilizes one electric driven and one tandem steam and electric driven feedwater pump. The AFW pumps take suction from the condensate storage tanks. The onsite reservoir, which can be manually valved into the suction side of the AFW pumps, serves as the backup source of water. When the condensate storage tank is isolated from the AFW system, water from the reservoir flows by gravity to the suction side of the AFW pumps. Therefore, no additional pumps are required. The AFW pumps can be powered by the emergency diesel generators. The

licensee stated that the diesel generators have onsite fuel available for 175 to 250 hours of continuous operation and that additional supply of oil can be brought onsite by tanker trucks from local supplies. For long term heat removal, the decay heat system will be utilized. The decay heat removal pumps can be powered by the diesel generators.

Since the capability to achieve cold shutdown utilizing onsite power is available during the time period proposed by the licensee without any adverse effects on the reactor, we find the licensee's cooldown time period acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely the application of the regulation in the particular circumstance is not necessary to achieve the underlying purpose of the rule: to require that the alternative or dedicated shutdown capability be able to achieve cold shutdown conditions independent of offsite power and without any adverse effects on the reactor. Specifically, as noted above, the licensee has demonstrated, using conservative analyses, the capability of achieving cold shutdown in 205 hours with alternate shutdown utilizing only onsite power without any adverse effects on the reactor. This leads the staff to conclude that requiring alternative or dedicated shutdown capability to be able to achieve cold shutdown conditions within 72 hours (rather than 205 hours as requested by the licensee) is not necessary to assure no adverse effects on the reactor. Accordingly, the Commission hereby grants an exemption as described in Section III above from Subsection III.L of Appendix R to 10 CFR Part 50 to the extent that the alternative shutdown capability shall be able to achieve cold shutdown conditions in 205 hours.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (51 FR 6054).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 19th day of May 1985.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B.

[FR Doc. 86-13230 Filed 6-11-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from a portion of the requirements of Appendix R to 10 CFR 50.48, Fire Protection, to Southern California Edison Company (the licensee) for the San Onofre Nuclear Generating Station (SONGS) Unit 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The exemption would permit the licensee to operate shutdown-related systems not meeting various requirements of 10 CFR Part 50, Appendix R—section III.G by providing equivalent levels of protection.

The Need for the Proposed Action

The proposed exemption is needed in order to permit the licensee to use alternate fire protection configurations that achieve an equivalent level of safety compared to that attained by the compliance with section III.G of Appendix R.

Environmental Impact of the Proposed Action

The proposed exemption would not degrade the level of safety attained by compliance with the rule and there would be no change in accident doses to the environment. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined. Neither does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternative with equal or greater environmental impacts need not to be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts associated with fire protection modifications and compliance with the rule but would accrue unreasonable costs to the licensee without an increase in safety.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for San Onofre Unit 1.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no significant impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated May 30, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Main Library, University of California 92713.

Dated at Bethesda, Maryland, this 5th day of June 1986.

For the Nuclear Regulatory Commission.

George F. Lear,

Director, PWR Project Directorate No. 1, Division of PWR Licensing-A.

[FR Doc. 86-13228 Filed 6-11-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23307; File No. SR-PSDTC-83-05]

Self-Regulatory Organizations; Pacific Securities Depository Trust Co.; Order Withdrawing Proposed Rule Change

On July 5, 1983, Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission, pursuant to

section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), a proposed rule change that would enable participants to communicate with PSDTC via an automated terminal system (the "Pacific Participant Terminal System" or "PPTS").

Notice of the proposed rule change was published in Securities Exchange Act Release No. 22290 (50 FR 32667, August 13, 1985). No letters of comment were received by the Commission.

By letter dated May 23, 1986, PSDTC rquested that the proposal be withdrawn. PSDTC has represented that it will submit a new, comprehensive and updated filing covering PPTS. In response to this request, the Commission grants the withdrawal of the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, withdrawn.

[For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 6, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13255 Filed 6-11-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23296; File No. SR-Phlx-86-11]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on March 21, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to revise its disciplinary procedures for the disposition of violations of specified Options Floor Procedure Advices ("Advices").

Under the proposed procedure,[1] violations of certain Phlx Advices may be considered minor rule violations for the purposes of Phlx's proposed Rule 19d-1 plan for abbreviated, periodic reporting to the Commission of such violations.[2] Alleged violations of a minor rule could result in the Exchange's staff serving the alleged violator with notice of the violation.[3] The alleged violator will be provided not less than seven business days to decide whether to contest the violation or pay a fine. If the alleged violator decides not to contest the violation, these violations will not be deemed "final" disciplinary action for the purpose of Rule 19d-1 and the member's own records. If the member decides to contest the violation, the matter will be referred to the Exchange's Business Conduct Committee ("BCC") for its consideration.

Under the proposed plan, before notice is given of the alleged violation, the staff of the Exchange will reserve the right to recommend to the BCC that the violation at issue should not be deemed "minor" but rather that formal disciplinary action should be taken. If, however, the violator agrees to an appropriate sanction not exceeding $2,500, and waives any rights to contest the charge, the Exchange will catgorize the violation as "minor" and treat it accordingly with respect to the filing requirements of Rule 19d-1.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 23130, April 15, 1986) and by publication in the **Federal Register** (51 FR 15087, April 22, 1986). No comments on the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 4, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13254 Filed 6-11-86; 8:45 am]

BILLING CODE 8010-01-M

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[1] In Securities Exchange Act Release No. 21013 (June 1, 1984) 49 FR 23838, the Commission adopted amendments to paragraph (c) of Rule 19d-1 to alow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments, any disciplinary action taken by an SRO against any person, for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to a plan filed with the Commission, shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person at the SRO has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies. The Commission previously has approved minor disciplinary rule plans by the American Stock Exchange, Inc., *see* Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (File No. 4-260); the New York Stock Exchange, Inc., *see* Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (File No. 4-284); and the Pacific Stock Exchange, Inc., *see* Securities Exchange Act Release No. 22653 (November 21, 1985), 50 FR 48853 (File No. 4-285).

[2] The Phlx has submitted its plan pursuant to Rule 19d-1 to report certain rule violations and related disciplinary actions on an abbreviated and periodic basis. *See* letter from Douglas Block, Vice President, Phlx, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated May 1, 1986. Notice of the proposed plan pursuant to Rule 19d-1 was published for comment by the Commission. The notice contains a complete list of Advices subject to the plan, along with the applicable fine schedule for each Advice. *See* Securities Exchange Act Release No. 23249 (May 16, 1986), 51 FR 19278 (File No. 4-289).

[3] The form for notice of an alleged violation will include the name of the member or member organization, or any partner, officer, director, or person employed by or associated with any member or member organization alleged to have violated the Advice, the date of notice, the violation at issue, and the fine for the violation. The Exchange anticipates adding other minor rules, subject to Commission approval.

[Release No. IC—15132; File No. 812-6374]

Boettcher & Company, Inc.; Application

June 5, 1986.

Notice is hereby given that Boettcher & Company, Inc. (the "Applicant"), 828 17th Street, Denver, Colorado 80202, a registered broker-dealer under the Securities Exchange Act of 1934 ("1934 Act"), filed an application on May 7, 1986 for an order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting certain transactions from the provisions of section 30(f) of the Act to the extent that it incorporates the provisions of section 16 of the 1934 Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below, and to the Act, the 1934 Act and the Rules thereunder for the text of pertinent statutory provisions.

According to the application, Applicant is acting on behalf of itself, Bateman Eichler, Hill Richards, Incorporated, Blunt Ellis & Loewi Incorporated and Johnston, Lemon and Co. Incorporated, the prospective representatives ("Representatives") of a group of underwriters ("Underwriters") being formed in connection with a proposed public offering of common stock of Ellsworth Convertible Growth and Income Fund, Inc. ("Company"), a registered, closedend, diversified, management investment company. A registration statement relating to the offering ("Registration Statement") was filed with the Commission on May 2,

1986. Applicant states that in the proposed public offering, the Company will offer 5,000,000 shares of commons stock to the public, plus 750,000 shares to cover the Underwriters' over-allotment option. Shares are to be purchased by the Underwriters pursuant to an underwriting agreement ("Underwriting Agreement") to be entered into between the Underwriters, represented by the Representatives, the Company, and Davis-Dinsmore Management Company, the Company's investment adviser ("Adviser"). It is also contemplated that one or more dealers will offer to sell some of the shares, and in connection with such offer and sale, each dealer will execute a Selected Dealer Agreement. It is intended that the Underwriters will make a public offering of all the shares which the Underwriters are to purchase under the Underwriting Agreement, at the price specified therein, as soon as or after the effective date of the Company's Registration Statement as the Representatives deem advisable. Although the Registration Statement covers 5,750,000 shares of common stock (including the shares to cover Underwriters' over-allotment option), the number may be increased or decreased in the Registration Statement as amended at the time it becomes effective, depending on market conditions and other factors to be considered by the Representatives and the Company at that time.

Applicant states that the underwriting commitment of any one or more of the Underwriters, including the Applicant, may exceed 10% of the aggregate number of common shares of the Company to be outstanding upon completion of its initial public offering. In addition to purchases from the Company and sales of common shares, the Underwriters may engage in other purchases or sales of shares incident to a distribution, such as stabilizing purchases, purchases to cover over-allotments, and sales of common shares purchased in stabilization. Since section 30(f) of the Act subjects every person who is directly or indirectly the beneficial owner of more than 10% of any class of outstanding securities of a registered investment company to the same duties and liabilities as those imposed by section 16 of the 1934 Act, any underwriter owning more than 10% of the common shares of the Company may become subject to the filing requirements of section 16(a) of the 1934 Act, and, upon sale of the shares purchased by them, subject to the liabilities imposed by section 16(b) of the 1934 Act. Applicant also states that the Underwriters may fail to meet the requirement for exemption from section 16(b) as stated in Rule 16b-2(a)(3), because one or more of the Underwriters who, pursuant to the Underwriting Agreement, may be obligated to purchase more than 10% of the shares of the Company, may distribute more than 50% of the shares of the Company being offered. Moreover, one or more of the Underwriters, including the Representatives, even though they are initially obligated under the Underwriting Agreement to purchase 10% or less of the aggregate number of shares of the common stock to be outstanding upon completion of the public offering, may, as a consequence of defaults by other Underwriters, become obligated to purchase more than 10% of the aggregate number of shares of common stock to be outstanding, and such Underwriters may distrbute more than 50% of the shares of common stock being offered.

Applicant submits that section 16 of the 1934 Act was designed essentially to discourage the unfair use by insiders of "inside information" in short-term trading of their company's shares. Applicant submits that there is no inside information in existence concerning the Company since the Company, prior to the initial distribution of the shares, will have no assets, other than cash or cash equivalents, no business of any sort, and all material facts will be set forth in the Registration Statement pursuant to which the shares will be offered and sold. No officer or director of the Applicant is an officer or director of either the Company or the Adviser, or any affiliate of the Adviser, and Applicant states that it does not anticipate that any partner, director or officer of any other Underwriter will be a director or officer of the Company, the Adviser or any such affiliate.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 26, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13252 Filed 6-11-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15129; File No. 812-6290]

The Queensland Government Development Authority; Application

June 4, 1986.

Notice is hereby given that The Queensland Government Development Authority ("Applicant"), a corporation established under the laws of the State of Queensland, Commonwealth of Australia ("Queensland"), c/o Robert M. Thomas, Jr., Esq., Sullivan & Cromwell, 125 Broad Street, New York 10004, filed an application on January 29, 1986, and an amendment thereto on April 23, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions.

The Applicant was established pursuant to the Statutory Bodies Financial Arrangement Act 1982-84 (the "Statute") to act as the central borrowing authority of Queensland, raising funds for on-lending to Queensland govenmental bodies. The Statute is the primary legislation governing the Applicant. The Statute establishes the Applicant as a corporate body and sets out its constitution, functions and limits. Although the Applicant is a statutory body of Queensland, under the Statute it may borrow by the issue of inscribed stock; as of the date of this application A$409,979,879 in such stock was issued and outstanding in Australia (Such stock is in fact a type of indebtedness, in the manner of a savings bond, with a fixed maturity, bearing interest and conveying no equity interest. The largest part of such stock is held by individuals. No equity in the Applicant has been sold, and there is no intention that any will be sold). As of December 31, 1985, the total borrowings of the Applicant were A$1,167,646,593, including A$157,000,000 with maturities in excess of 270 days.

Applicant proposes to issue and sell prime quality, short-term negotiable promissory notes of the type generally referred to as commerical paper ("Notes") in offerings exempt from the registration requirements of the Securities Act of 1933 ("1933 Act"), by virtue of section 3(a)(3) thereof or, in some cases, section 4(2) thereof. Applicant undertakes not to market any Notes prior to receiving an opinion of United States counsel to the effect that the proposed offering is exempt from the registration requirements of the 1933 Act. Applicant does not request review or approval by the Commission of counsel's opinion regarding the availability of such an exemption.

Queensland will unconditionally guarantee the payment of principal, interest and premium, if any, on the Notes issued by Applicant ("Guarantees"), and will expressly consent to the enforcement of the Guarantees directly by the holders of the Notes. The Notes will have one of the highest investment grade commerical paper ratings from at least one nationally recognized statistical rating organization and the Applicant's legal counsel in the United States will certify such a rating has been received.

The Notes will not be offered for sale to the general public, but instead will be sold through one or more commerical paper dealers to institutional investors and other entities and investors of the type which ordinarily purchase commerical paper notes in large denominations. Applicant states that, while an announcement of the establishment of the commerical paper facility may be made as a matter of record, the offering for sale of the Notes will not be otherwise advertised.

Applicant states that it may, from time to time, in the future, offer and sell debt securities other than the Notes. No such securities will be offered or sold unless (a) they are registered under the 1933 Act or (b) in the opinion of special United States counsel and exemption from registration under the 1933 Act is available with respect to such offer and sales or (c) the staff of the Commission states that they would not recommend that the Commission take any action under the 1933 Act if such securities are not registered. Applicant undertakes to provide to any person to which it offers its debt securities in the United States (and undertakes to take reasonable steps to ensure that any underwriter or dealer through whom it makes such offers will provide to each person to whom such offers are made prior to any sale of debt securities to such offeree) disclosure documents which are at least as comprehensive in their description of Applicant and Queensland as those which may be used by United States issuers in United States offerings of such securities and which contain the financial statements of Applicant.

In connection with any issue and sale of the Notes and any future offering by Applicant of its debt securities in the United States, Applicant and Queensland will appoint an agent in the United States to accept service of process in any suit, action or proceeding brought on the Notes, Guarantees or debt securities and instituted in any state or federal court in the Borough of Manhattan, The City of New York, New York, by the holder of any debt securities. Applicant will expressly submit to the jurisdiction of any such court with respect to any such suit, action or proceeding. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect thereof have been paid. No such submission to jurisdiction or appointment of agent for service of process will affect the right of a holder of any such security to bring suit in any court which has jurisdiction over Applicant (or Queensland) by virture of the offer and sale of such securities or otherwise.

Applicant states that it could not issue the Notes in reliance upon the exemption provided in Rule 3a-5 under the Act because it and its potential guarantor (Queensland) are governmental entities. Notwithstanding that Applicant would not fall within the precise terms of Rule 3a-5 for such technical reasons, Applicant submits that the requested exemption is consistent with the intent of Rule 3a-5 and Applicant represents that, other than as set forth in the application, it will operate in compliance with the provisions of Rule 3a-5. Applicant contends that its structure, the intended use of proceeds and the protection provided by the Guarantees are consistent with the theory of Rule 3a-5 as Applicant would act as a conduit for financing the activities of Queensland's various statutory bodies.

Applicant believes that the issuance of an order pursuant to section 6(c) exempting it from all provisions of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that it is not a person which was intended to be covered by the Act. Applicant is the central borrowing authority of a sovereign government organized to borrow funds and to loan the net proceeds from any borrowings to statutory bodies for use in financing their operations. Applicant states that neither Queensland nor any other of the statutory bodies to which Applicant would lend the net proceeds from the sale of the Notes is an investment company within the meaning of the Act. Applicant maintains that it is a statutory body with characteristics different from types of investment companies at which the Act was generally directed and for which its substantive provisions are necessary or suitable. Applicant further maintains that Queensland and its other statutory bodies are permitted to issue and sell their own commercial paper notes without compliance with the Act, and it is appropriate that Applicant, which would serve merely as a conduit for financing the operations of such entities, should be exempted from the requirements of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 25, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13253 Filed 6-11-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-727]

Salomon Brothers Mortgage Securities IV, Inc.; Application and Opportunity for Hearing

June 6, 1986.

Notice is hereby given that Salomon Brothers Mortgage Securities IV, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from certain

reporting requirements under section 13 and the operation of section 16 of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person not later than July 3, 1986, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communciation or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13256 Filed 6-11-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Beverly Glen Venture Capital; Surrender of License

[License No. 09/09-0327]

Notice is hereby given that Beverly Glen Venture Capital, 214 South Beverly Glen Blvd., Los Angeles, California 90025 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Beverly Glen Venture Capital was licensed by the Small Business Administration on September 21, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on June 3, 1986, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 5, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-13284 Filed 6-11-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2239]

Trust Territory of the Pacific Islands; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 3, 1986, I find that the Island of Ponape (Pohnpei) in the Trust Territory of the Pacific Islands constitutes a disaster loan area because of damage from Typhoon Lola beginning on or about May 16, 1986. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on August 4, 1986, and for economic injury until the close of business on September 2, 1986, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 258, Sacramento, California 95825, or other locally announced locations.

The interest rates are	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	10.500

The number assigned to this disaster is 223906 for physical damage and for economic injury the number is 641100.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: June 5, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-13283 Filed 6-11-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

TWA-Ozark Acquisition Case; Hearing

[Docket 43837]

Notice is hereby given that the hearing in the above-entitled proceeding will commence on June 16, 1986, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC, before the undersigned administrative law judge.

Dated at Washington, DC, June 6, 1986.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 86-13265 Filed 6-11-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; La Crosse County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in La Crosse County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Michael M. Moravec, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Blvd., Madison, Wisconsin 53705-4905, Telephone: (608) 264-5947.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, City of La Crosse, La Crosse County, and the City of Onalaska, will prepare an Environmental Impact Statement (EIS) for a proposed improvement on a new location from Gillette Street, County Trunk Highway (CTH) B, to the State Trunk Highway (STH) 157/I-90 Interchange in La Crosse County. The 1.4 mile proposed urban expressway will be located on the northeast edge of the City of La Crosse and potentially involves work in the City of La Crosse, City of Onalaska, and the Town of Medary. Much of the proposed project is within the floodplain of the La Crosse River; and hydraulic work may be required on the La Crosse River to compensate for hydraulic impacts.

The proposed project is needed to relieve traffic on the parallel north-south arterial highways (STH 35 and STH 16). In addition, the proposed project provides access to and flood protection for the anticipated expansion of the La Crosse Industrial Park.

Alternatives to be considered will include the "do nothing" alternative and possible further improvements to existing highways (STH 35 & STH 16). Incorporated into and studied with the various build alternatives will be design variations of alignment and connection to the existing roadway system at CTH SS and Gillette Street (CTH B).

Coordination and scoping activities will involve agencies that are identified as having an interest in or jurisdiction

by law regarding the proposed action. Agencies will be notified by mail of the date of the formal scoping meeting. In addition, coordination will continue with local units of government, private interest groups, and local citizens, including public meetings.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action are addressed and all significant issues identified. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided.

Issued on: June 2, 1986.

Frank M. Mayer,

Division Administrator.

[FR Doc. 86-13275 Filed 6-11-86; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on July 23, 1986, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by July 11, 1986. If sufficient time is available, questions received after the July 11, date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by July 11, and the issues to be discussed will be mailed to interested persons on July 18, 1986, and will be available at the meeting.

ADDRESS: Questions for the July 23 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHSTA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on July 23, 1986. The meeting will begin at 10:30 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHSTA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590.

Issued on June 6, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-13266 Filed 6-11-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 6, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC. 20220.

U.S. Customs Service

OMB Number: 1515-0094
Form Number: None
Type of Review: Extension
Title: Part 191, Customs Regulations (Recordkeeping Requirement)

OMB Number: 1515-0100
Form Number: None
Type of Review: Revision
Title: Customs Regulations Pertaining to Customshouse Brokers

Clearance Officer: Vince Olive (202) 566-9181, U.S. Custom Service, Room 6321, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

S.F. Timothy Mullen,

Departmental Reports, Management Office.

[FR Doc. 86-13299 Filed 6-11-86; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 86-108]

Approval of Coastal Gulf & International, Inc., To Gauge Imported Petroleum and Petroleum Products

AGENCY: Customs Service, Treasury.

ACTION: Notice of Approval.

SUMMARY: Pursuant to § 151.43(b), Customs Regulations (19 CFR 151.43(b)), Coastal Gulf & International, Inc., P.O. Box 1156, Donaldsonville, Louisiana 70346, has applied to Customs for approval to gauge imported petroleum and petroleum products. It has been determined that Coastal Gulf & International meets all of the requirements to be a Customs approved public gauger.

Accordingly, the application of Coastal Gulf & International, Inc., to gauge imported petroleum and petroleum products in all Customs Districts is approved.

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Technical Services Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington DC 20229 (202-566-2446).

Dated: June 5, 1986.

Roger J. Crain,

Chief, Technical Section, Technical Services Division.

[FR Doc. 86-3282 Filed 6-11-86; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Veterans Administration

Wage Committee for calendar year 1985 has been issued.

The report summarizes activities of the Committee on matters related to wage surveys and pay schedules for Federal prevailing rate employees. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications, Reading Room, LM 133, Madison Building, Washington, DC 20540

Veterans Administration, Office of the Committee Secretary, VA Wage Committee, Room 1108, 810 Vermont Avenue, NW., Washington, DC 20420

Dated: June 5, 1986.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-13297 Filed 6-11-86; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92-463, gives notice that meetings of the Veterans Administrtaion Wage Committee will be held on:

Thursday, July 3, 1986, at 2:30 p.m.
Thursday, July 17, 1986, at 2:30 p.m.
Thursday, July 31, 1986, at 2:30 p.m.
Thursday, August 14, 1986, at 2:30 p.m.
Thursday, August 28, 1986, at 2:30 p.m.
Thursday, Sept. 11, 1986, at 2:30 p.m.
Thursday, Sept. 25, 1986, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specification, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: June 5, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-13298 Filed 6-11-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 113
Thursday, June 12, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 12, 1986.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY' 88 Planning Issues/Priority Projects/ Budget Format

The staff will brief the Commission on fiscal year 1988 planning issues, fiscal year 1988 priority projects and budget format.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

June 10, 1986.

[FR Doc. 86–13412 Filed 1–10–86; 3:26 pm]

BILLING CODE 6355-01-M

2

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 17, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, June 19, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Draft AO 1986–16
Donald H. Heckard on behalf of Ridlen for Congress Committee
Draft AO 1986–18
Representative Tom Bevill
Proposed Regulations on Standards of Conduct 11 CFR Part 7
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 86–13414 Filed 6–10–86; 3:26 pm]

BILLING CODE 6715-01-M

3

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

DATE AND TIME: 11:00 a.m., Tuesday, June 17, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Builidng, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 10, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86–13399 Filed 6–10–86; 2:56 pm]

BILLING CODE 6210-01-M

federal register

Thursday
June 12, 1986

Part II

Environmental Protection Agency

40 CFR Part 710

Partial Updating of TSCA Inventory Data Base; Production and Site Reports; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[OPTS-82015A; FRL-2973-3]

Partial Updating of TSCA Inventory Data Base; Production and Site Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule, promulgated under the authority of section 8(a) of the Toxic Substances Control Act (TSCA), requires manufacturers and importers of certain chemical substances included on the TSCA Chemical Substances Inventory to report current data on the production volume, plant site, and site-limited status of the substances. After the initial reporting, recurring reporting will be required every 4 years for as long as this rule is in effect. Promulgation of this rule does not affect the status of a chemical substance listed on the Inventory.

DATES: This rule shall be promulgated for purposes of judicial review under section 19 of TSCA at 1 p.m. eastern daylight time on June 26, 1986. This rule is effective on August 25, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, DC: (554-1404). Outside the U.S.A.: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

This rule is promulgated under section 8(a) of TSCA, which provides the Administrator of EPA the authority to require, by rule, manufacturers, importers, and processors of chemical substances to submit such information as the Administrator may reasonably require. Failure to comply fully with any provision of this rule is a violation of section 15 of TSCA and will subject the violator to the penalties of TSCA sections 16 and 17.

II. Summary of the Rule

This rule requires manufacturers and importers to report current data on the production volume, plant site, and site-limited status (i.e., whether a chemical substance is manufactured and processed only within a plant site and is not distributed for commercial purposes as a substance or as part of a mixture or article outside the plant site) for certain chemical substances included on the TSCA Chemical Substances Inventory. For the purposes of this rule and preamble, the term "manufacturer" includes importer, unless otherwise specified. A person is considered to be a manufacturer subject to this rule if that person has manufactured or imported a reportable substance in the United States at any time during that person's most recent complete corporate fiscal year preceding the effective date of a relevant reporting period specified in this rule.

This rule requires both initial and recurring reporting. During the initial reporting period, every manufacturer of a chemical substance covered by this rule who produces over 10,000 pounds (4,540 kilograms) of a reportable substance at a plant site will be required to report separately on every such substance. Low-volume substances, i.e., substances with an annual site-specific production volume (or total amount imported) of less than 10,000 pounds, are excluded from this rule. After the initial reporting period, the same type of reporting will be required every 4 years for as long as this rule is in effect.

The substances covered by this rule include those that were initially reported for the Inventory, as well as substances added to the Inventory following TSCA section 5(a) premanufacture notification (PMN) review and the Agency's receipt of a notice of commencement of manufacture or import. Four categories of substances, though on the Inventory, are generally excluded from this rule. These excluded substances are those that are identified as polymers, inorganic substances, microorganisms, and naturally occurring chemical substances as described under § 710.4(b) of the Inventory Reporting Regulations. However, no substance, except one which is naturally occurring, is excluded from this rule if that substance is the subject of an order issued pursuant to TSCA section 5(e) or 5(f), or is the subject of a rule proposed or promulgated under TSCA section 4, 5(a)(2), 5(b)(4), or 6, or is the subject of relief granted under a civil action under section 5 or 7 of TSCA.

In addition to the proposed exclusions of substances, two categories of persons are exempt from certain reporting and recordkeeping requirements: Small manufacturers and persons manufacturing substances in limited circumstances. The small manufacturer exemption, however, does not apply if the substance to be reported by the small manufacturer is the subject of an order issued pursuant to TSCA section 5(e), or is the subject of a rule promulgated under TSCA section 4, 5(b)(4), or 6, or is the subject of relief granted under a civil action under section 5 or 7 of TSCA.

The information reported under this rule includes chemical identity, plant site, annual production volume, and site-limited status of a reportable substance. For each submission, EPA also requires the name, address, and telephone number of a person who can answer technical questions related to the submission. Persons subject to this rule are required to maintain records that support the information in their submissions. Such records are to be kept for 4 years beginning with the effective date of each reporting period.

III. Background

In the **Federal Register** of March 12, 1985 (50 FR 9944), EPA published a proposed rule for reporting of current data on the production volume, plant site, and site-limited status of certain chemical substances included on the TSCA Chemical Substances Inventory. EPA indicated in the proposal that it needs this information to update a critical portion of the TSCA Inventory data base which is used to support a number of TSCA activities. A 60-day public comment period followed the publication of the proposed rule.

This notice discusses the major comments, modifies certain provisions of the proposed rule, and promulgates the final rule under the authority of section 8(a) of TSCA. This rule is promulgated as an amendment to 40 CFR Part 710 which currently contains the Inventory Reporting Regulations of 1977. This amendment formally designates existing §§ 710.1 through 710.8 as Subpart A and adds new Subpart B.

IV. Provisions of the Final Rule

A. Substances Covered by the Rule

Reportable substances under this rule are those that are listed in the Agency's Master Inventory File as of the time of reporting and that are not specifically excluded from this rule. Substances which were originally excluded from the initial Inventory under 40 CFR 710.2 are therefore not reportable under this rule.

As an aid to submitters under this rule, EPA is publishing a 1985 edition of the TSCA Chemical Substances Inventory which supersedes the Initial Inventory published in 1979 and the supplements to the Initial Inventory. This reissued Inventory covers over 63,000 substances, including 6,000 substances which have been added since the last publication in 1982. Since

the printed Inventory can never be as complete as the Agency's Master Inventory File (which also contains specific identities for confidential substances), the Master Inventory File is, therefore, the only source which can conclusively determine whether a substance in question is on the Inventory. Manufacturers who may be subject to the requirements of this rule are urged to first use the printed Inventory for reporting purposes, especially for substances with nonconfidential identities, before requesting EPA to perform a search of the Master Inventory File. Procedures for requesting a search of the Master Inventory File are discussed in the instruction booklet entitled "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base." A copy of this instruction booklet can be obtained by contacting the Agency at the address listed in § 710.39 of this rule.

Since EPA continually adds to the Master Inventory File substances that have undergone PMN review and that are subsequently reported as manufactured or imported, the Agency may publish supplements to the Inventory from time to time covering additions to the Master Inventory File since a previous publication. Substances added to the Master Inventory File after the start of a reporting period become reportable in the next reporting period, unless otherwise excluded from this rule.

B. Substances Excluded From the Rule

Four categories of substances, though included on the Inventory, are generally excluded from the reporting and recordkeeping requirements of this rule. These categories are polymers, inorganics, microorganisms, and naturally occurring chemical substances. However, if a polymer, an inorganic substance, or a microorganism is the subject of an order issued pursuant to TSCA section 5(e) or 5(f), or is the subject of a rule proposed or promulgated under TSCA section 4, 5(a)(2), 5(b)(4), or 6, or is the subject of relief granted under a civil action under TSCA section 5 or 7, that substance is not excluded from the rule.

To assist manufacturers subject to this rule to quickly identify an excluded substance, EPA has labeled with a special "XU" flag in the 1985 edition of the printed Inventory most of the substances that are excluded from this rule. Where a flag is found, manufacturers may rely on it as a signal that labelled substance is not subject to reporting. Where no flag is found and a substance may appear to fall within an excluded category, manufacturers should consult EPA. This is a consequence of technical difficulties with the application of flags by computer.

The four excluded categories are discribed below:

1. *Polymers.* For the purposes of this rule, a polymer is identified by the presence of any one (or more) of the word fragments "*polym*", "*alkyd", or "*oxylated" in the Chemical Abstracts Service (CAS) Index or Preferred Nomenclature of a particular substance, where the asterisk (*) indicates that any set of characters may precede, or follow, the character string defined. The CAS Index or Preferred Nomenclature can be easily obtained from the printed Inventory's "Chemical Substances Identities" section.

Polymers which are UVCB (i.e., chemical substances of unknown or variable composition, complex reaction products, and biological materials) substances, which do not contain one of the aforementioned character strings, can be identified in the hierarchy of subset headings in the printed Inventory's UVCB Index section. These UVCB subset headings are as follows: siloxanes and silicones, silsesquioxanes, proteins (albumin, casein, gelatin, gluten, hemoglobin), enzymes, polysaccharides (starch, cellulose, gums), rubber, or lignin. In general, all individual substances listed under any of the above UVCB subset headings are considered polymers and are therefore excluded from this rule. However, polymers which have been hydrolyzed, depolymerized, or chemically modified to the extent that the final products are no longer polymeric (e.g., a protein which is completely hydrolyzed into amino acids) are reportable.

EPA has labeled with an "XU" flag in the 1985 edition of the Inventory all of those polymers which contain one of the aforementioned character strings. UVCB biopolymers, except for those that contain a character string or polymer code, are generally not flagged. Therefore, users of the printed Inventory should be aware that substances other than those labeled with the "XU" flag may also be excluded from this rule.

EPA believes that the coverage for polymers for the purposes of this rule is sufficiently broad to include virtually all those substances that are generally considered as polymers.

2. *Inorganics.* For the purposes of this rule, inorganic substances are those that do not contain a carbon atom, or contain carbon only in the form of carbonato [= CO_3], cyano [–CN], isocyano [–NC], cyanato [–OCN], or isocyanato [–NCO] groups, or the chalcogen analogues of these groups.

In the 1985 edition of the Inventory, "XU" flags are applied to all inorganic substances that have molecular formulas which do not contain the element carbon. UVCB inorganics with no molecular formulas or inorganics containing carbon are not flagged on the Inventory, although they are considered inorganics and not reportable under this rule.

3. *Microorganisms.* For the purposes of this rule, this category includes bacteria, eimeria, fungi, and yeasts which are easily identifiable in the hierarchy of UVCB subset headings and are also identified on the Inventory by their corresponding CAS Preferred Names which are usually standard names for the species. Products of microorganisms are, however, reportable unless otherwise excluded. In the 1985 edition of the Inventory, "XU" label flags are applied to all substances listed under one of these three UVCB subset headings.

4. *Naturally occurring chemical substances.* Chemical substances, as described in § 710.4(b) of the Inventory Reporting Regulations (40 CFR Part 710) of 1977, are considered "naturally occurring" and are not reportable under this rule. However, persons who produce a substance in a manner other than as described in § 710.4(b) are required to report unless otherwise excluded.

This exclusion covers chemical substances which are naturally occurring and which are unprocessed or processed only by manual, mechnical, or gravitational means, by dissolution in water, by flotation, or by heating solely to remove water or which are extracted from air by any means. Examples of such substances include raw agricultural commodities, water, air, natural gas, crude oil, minerals, ores, and rocks.

Since whether a substance is considered as "naturally occurring" depends on the manner in which it is produced, it is impossible to label such substances with the "XU" flags because "naturally occurring" substances are not included on the Inventory.

C. Persons Subject to the Rule

Except for those persons described in unit IV.D below, a person is a manufacturer subject to this rule if that person has manufactured or imported for commercial purposes 10,000 pounds or more of a reportable substance at a particular site at any time during that person's most recent complete corporate fiscal year immediately preceding the

effective date of the rule or the start of any recurring reporting period.

D. Persons Exempt from the Rule

Two categories of persons are exempt from the reporting and recordkeeping requirements of this rule, provided that they qualify for one of the exemptions during a reporting period. Since a person who qualifies for an exemption during one reporting period may no longer qualify during the next reporting period, each person who may be subject to this rule must determine the person's exemption status during each succeeding reporting period.

1. *Small manufacturers.* Persons qualify as small manufacturers under this rule if, at the time of reporting, they meet one of the two standards specified in the TSCA section 8(a) Small Manufacturer Exemption Rule (40 CFR 704.5(d)) which was published in the **Federal Register** of November 16, 1984 (49 FR 45425). However, no person is considered a small manufacturer for the purposes of reporting a chemical substance that is the subject of an order issued pursuant to TSCA section 5(e), or is the subject of a rule proposed or promulgated under TSCA section 4, or 5(b)(4), or 6, or is the subject of relief granted under a civil action under TSCA section 5 or 7. Such persons must comply with the reporting and recordkeeping requirements under this rule for that particular substance.

2. *Persons manufacturing substances in limited circumstances.* Persons who manufacture reportable substances either in limited ways or through coincidental manufacture are exempt from the requirements of this rule for those substances. Therefore, persons who manufacture or import substances solely in small quantities for research and development or persons who import substances as part of articles, are exempt from this rule for those activities. Furthermore, persons who manufacture substances as impurities, byproducts, or in a manner incidental to another operation or upon end use of another substance or mixture, as described under § 720.30 (g) and (h) of the Premanufacture Notification Rule of 1983, are also exempt from the requirements of this rule for those substances.

E. Low-Volume Threshold

For the purposes of this rule, a low-volume reporting threshold is established to exempt from reporting those substances that are produced at low volumes. If a person's site-specific annual production volume for a reportable substance is below 10,000 pounds during the person's most recent complete corporate fiscal year before a reporting period, no reporting will be required for that substance for that period. In the case of importers, the measurable volume is the total amount of a substance imported during that year by each site which contains an operating unit responsible for the import. Thus a company which allows each plant to conduct its own import operations would make the determination for each such plant; a company which handles imports through its corporate headquarters would make the determination for all imports handled through the headquarters on an aggregate basis. Similarly, reports would be made by the site which actually conducts the import operation—either the specific plant or the corporate headquarters. If a substance's site-specific annual production volume or total amount annually imported increases to 10,000 pounds or more during the fiscal year preceding a subsequent reporting period, the person would be required to comply with the reporting requirements of this rule for that substance at that site.

F. When to Report

Current data, as described under unit IV.G below, must be submitted for each reportable substance at each plant site once every 4 years. For each round of reporting, submitters will have 120 calendar days to submit a report. Therefore, the first reporting period will commence on the effective date of this rule and will end 120 days after the effective date. Recurring reporting will take place on the fourth anniversary of the effective date and every 4 years thereafter. EPA plans to publish in the **Federal Register** a brief reminder announcement 2 months prior to the beginning date of each recurring reporting period.

G. What to Report

Persons who are subject to this rule are required to report by completing original numbered copies of the reporting form designated in § 710.39 of the rule, or by submitting the information in a computer tape. No other types of submissions will be acceptable. Detailed instructions for filling out the reporting form as well as specifications for submitting computer tape are discussed in the reporting instruction booklet. Persons who report via computer tape must follow the specifications discussed in the instruction booklet. Otherwise, the tape cannot be processed, will be rejected, and must be resubmitted.

To further simplify reporting procedures, EPA has combined the two previously proposed reporting forms into one form. Submitters, however, must not mix on one form information for substances with confidential chemical identities and information for those with nonconfidential chemical identities. Parts I, II, and III of the reporting form include the certification to be signed by the submitter and other basic submitter information. The extent to which Part IV of the form is completed will depend on the number of chemical substances reported on that form. Copies of the reporting forms can be obtained by contacting EPA at the address listed in § 710.39 of this rule.

The information requirements for this rule are discussed below.

1. *Chemical identity.* For each chemical substance covered by this rule, a submitter is required to provide certain specific information which will enable the Agency to identify quickly and uniquely that substance. Where known, such information must include the CAS Registry Number and a chemical name that is not a trade name. For most of the nonconfidential substances, the corresponding CAS Registry Number can be easily obtained from the 1985 edition of the Inventory. If the identity of the substance is claimed as confidential and no CAS Registry Number has been assigned to that substance, a submitter should provide a chemical name and an EPA-designated Accession Number for that substance. Each substance with a confidential identity has been assigned an Accession Number. Accession Numbers for confidential substances are listed in the generic names section of the printed Inventory. If a person does not know whether a substance is covered by one of the generic names, the person should contact EPA by following the procedures described in the aforementioned instruction booklet to determine whether the substance in question is reportable.

Other identifying numbers, i.e., PMN Case Number, original Inventory Reporting Form Number, Bona Fide Document Control Number, or Test Market Exemption Application Case Number, should be used only if a submitter cannot identify a particular substance by either its corresponding CAS Registry Number or EPA Accession Number.

2. *Plant site.* Manufacturers are required to report by specific plant site name and street address. Corporate headquarters, business, or Post Office Box addresses are not acceptable for reporting. However, if a corporation has a number of plant sites and wishes to have the corporate headquarters

coordinate the submission of reports, it may do so as long as information for different plant sites is reported on separate reporting forms.

With regard to importers, the definition under § 710.2(1) of the Inventory Reporting Regulations applies. Therefore, an importer means "* * * any person who imports a chemical substance, including a chemical substance as part of a mixture or article, into the customs territory of the United States," and includes "* * * the person primarily liable for the payment of any duties on the merchandise * * *". For the purposes of this rule, as discussed in Unit IV.E. above, certain importers must report by the United States headquarters or similar central office. However, if a plant site imports a substance directly from a foreign supplier and is "primarily liable for the payment of any duties" on that substance, the plant is then the importer of that substance. In that case, the imported substance must be reported directly by that plant site. This approach allows companies to report consistent with the conduct of their importing.

Each submitter is also required to provide a Dun & Bradstreet Number for each site reported under this rule.

3. *Manufacturer/importer.* Every submitter is required to indicate whether that person is a manufacturer and/or an importer for each of the substances reported for each site.

4. *Site-limited status.* Manufacturers are required to indicate whether a chemical substance manufactured at a plant site is distributed for commercial purposes outside that site, as a substance or as part of a mixture or an article. Imported substances cannot be site-limited.

5. *Production volume.* Respondents to this rule must report the plant site production volume (or total quantity imported) of each substance for which reporting is required. Quantities must be reported in pounds. Reporting must be accurate to the extent that the information is known to or reasonably ascertainable by the submitter, or to two significant figures. Production volume information reported within ±10 percent of the actual value will be acceptable for purposes of this rule. Manufacturers are required to report the annual production volume of each reportable substance at each plant site at which it is produced. Importers may report volume by plant site or as the total quantity imported by the company.

6. *Technical contact.* For each report submitted under this rule, a submitter is required to identify the name, address, and telephone number of an individual who can answer questions concerning the information on the reporting form.

H. Confidentiality

1. *Asserting claims.* While information submitted under this rule can generally be claimed as confidential, EPA strongly encourages respondents to this rule to carefully consider the necessity of asserting such claims. As provided by section 14 of TSCA, claims of confidentiality can be asserted only if release of the information would reveal company trade secrets or other confidential commercial or financial information. Furthermore, claims of confidentiality must be asserted at the time information is submitted to EPA in the manner specified in the rule and reporting instructions. EPA's procedures for processing and reviewing confidentiality claims are set forth at 40 CFR Part 2, Subpart B.

To claim information as confidential, a submitter is required to check the appropriate box and sign the certification statement on the reporting form. If a submitter fails to do so, EPA may release the information to the public without further notice to the submitter. By signing the certification statement the submitter certifies that its claims of confidentiality are made in good faith and that the statements on the back of the reporting form are true for each claim. Procedures for claiming as confidential information submitted by computer tape are contained in the instruction booklet.

2. *Chemical identity.* If a submitter wishes to claim the specific identity of a reportable substance as confidential business information, the submitter must report on the form (not by computer tape) and must check the "confidential" box for chemical identity under Column IV d of the reporting form and provide the required substantiation by answering the questions in § 710.38(c)(2) of this rule. A submitter, however, may not assert a claim of confidentiality for the identity of a substance if such identity is not already held confidential on the Inventory as of the time of the report. For each of the recurring reporting periods under this rule, a submitter is required to resubstantiate each claim of confidentiality even if the circumstances with regard to that claim have not changed since the last report.

If a manufacturer reports information under this rule for a chemical substance whose identity is held confidential on the Inventory and the manufacturer does not claim the chemical identity confidential, EPA will consider the identity of that substance no longer confidential for the purposes of the Inventory and may therefore disclose the identity of that substance. EPA strongly encourages industry to reconsider the necessity of retaining those claims. If a submitter decides not to assert again a claim of confidentiality for the identity of a substance which is on the Inventory, that submitter will simply submit the required data under this rule for that substance, and will check the "nonconfidential" box for chemical identity on the reporting form.

Submitters are required to segregate information on substances with confidential identities from the information on those with nonconfidential identities by using separate forms for each.

I. Recordkeeping Requirements

Persons subject to this rule are required to maintain records for a period of 4 years beginning with the effective date of a reporting period. As long as the records are maintained in a manner consistent with normal business practice, each submitter may determine the exact format in which the records are to be kept. The records that are required include those that show the production volume, plant site, and site-limited status of each of the substances reported. If a substance is not reported because its site-specific annual production is less than 10,000 pounds, only the site-specific production records for that substance need to be kept. Persons who qualify as exempt small manufacturers are not required to keep records.

V. Discussion of Major Comments

EPA received comments from 37 organizations. Although many of the comments were received after the closing date of the comment period, the Agency fully considered all of them in promulgating the final rule. While almost all of the commenters agreed that EPA needs current data to update the Inventory data base, many presented suggestions regarding specific provisions of the proposed rule. Some commenters requested that EPA grant more chemical exclusions under this rule. One commenter, however, argued that the proposed chemical exclusions are not justified and urged the Agency to broaden the scope of the update by including all Inventory substances under the rule.

This unit discusses the major comments that have the greatest impact on the rule, and gives EPA's response for each of these comments. EPA has also classified into generic categories all comments received and summarized the Agency's response to these comments. This summary, together with copies of

the public comments, is included in the public record for this rulemaking [docket number OPTS–82015A]. Therefore, EPA's response to comments that are not specifically discussed in this unit can be found in the rulemaking record.

A. Reporting Actual Production Volume

Comments. Eighteen commenters objected to the proposed requirement that production volume information be reported in pounds, rather than in ranges as used in reporting for the 1977 Inventory. These commenters urged EPA to reconsider its position toward precise production data for the following reasons:

First, the commenters noted that reporting of precise production volume would significantly increase the number of confidentiality claims on production information. They pointed out that such a reporting requirement would directly contradict EPA's expressed desire that industry exercise restraint to reduce the number of confidentiality claims for data to be submitted under this rule.

Second, some commenters argued that if the primary purpose of the Inventory data base is to provide basic information for priority setting or chemical screening, as EPA indicated in the preamble to the proposed rule, the need for precise production data for these purposes is not fully justified because these uses of the data would not require such a level of accuracy.

Third, certain commenters pointed out that it would be technically difficult to report precise production data for certain types of substances. For example, precise production data would be difficult to calculate for ingredients in formulated products or mixtures, especially for imported mixtures. They maintained that a submitter would have to review each product or mixture to determine the percentage composition of each of the ingredients. From the percentage composition and total production volume, the production volume of each ingredient would be calculated.

Fourth, some commenters noted that precise production data would, in some cases, create even more uncertainty than production ranges because a particular annual production may be atypical. Furthermore, initial precision could degrade substantially over time. Reporting in exact figures would create, at best, a false precision. They also maintained that it is inconsistent for EPA to require such a degree of accuracy when the low-volume threshold provision of this rule would allow production data up to 10,000 pounds to be excluded entirely.

Almost all of the 18 commenters agreed that the production ranges used for the 1977 Inventory reporting are too broad, and recommended that EPA consider using ranges that are narrower. As a minimum, they suggested that EPA allow reporting of precise production data to one or two significant figures or rounding the figures to the nearest 10,000 pounds.

EPA's response. EPA is aware that requiring precise production data under this rule could result in more frequent claims of confidentiality for production data than were asserted under the original Inventory rule. However, the same result is likely if production data were required to be reported under this rule in ranges that are narrower than those required under the original Inventory. If broad ranges were required, the data would be of diminished use to EPA. Therefore, EPA believes that the advantages of requiring production data to be reported in specific numbers will far outweigh the possible disadvantage of increased confidentiality claims. It should be noted that EPA will closely monitor claims of confidentiality asserted under this rule.

EPA disagrees with the commenters' contention that precise production data are not justified under this rule. In the preamble to the proposed rule, EPA stated that the Agency "needs production data to set priorities for further investigation, to perform first-level screening of chemical substances for testing under TSCA section 4, to estimate, along with other data, the potential for human and environmental exposure to specific substances, to support the implementation of various TSCA regulations, and to perform economic impact analyses for potential TSCA regulations." These uses will require data that are reasonably accurate. The ranges used for reporting the 1977 production data for the original Inventory were so broad that the resulting uncertainty became unacceptable in many applications including priority setting.

Many commenters perceived that they would be required to count every pound of a chemical substance produced at a plant site. This is not the intent of the Agency. In fact, the preamble to the proposed rule clearly states that "a submitter should provide the best available information, i.e., production figures normally maintained at a plant site for business purposes and known to, or reasonably ascertainable by, a submitter * * *." Some commenters urged EPA to permit the reporting of production data to two significant figures. EPA agrees with this comment and has included such a requirement in the final rule.

Regarding the technical difficulty in obtaining production figures for ingredients in formulated products or mixtures, EPA believes that this difficulty is overstated. Regardless of whether production volume is reported in ranges or in actual figures, a submitter will have to do almost the same amount of work to calculate the production volume for each of the ingredients in a product or a mixture. Furthermore, the provision of two significant figures will sufficiently lessen the burden associated with that calculation.

EPA recognizes that actual production data, like production ranges, will inevitably degrade over time. Actual figures, however, are initially more accurate than ranges. Over a period of time, the initial uncertainty associated with production ranges will be compounded by degradation, thus making the ranges less desirable.

EPA disagrees with the contention that there is an inconsistency between requiring precise production data to be reported and exempting from reporting those substances with an annual site-specific production volume of less than 10,000 pounds. EPA established the low-volume threshold for this rule to better focus its information collection effort on substances representing a greater potential exposure concern and to provide certain reporting relief for those who manufacture only a small amount of a reportable substance. However, if a company's production volume of a reportable substance increases to 10,000 pounds annually at a particular site, reporting will be required. This provision bears no relationship to the level of accuracy at which the data are reported.

B. Recurring Reporting and Reportable Events

In the March 12 **Federal Register** notice, EPA proposed that recurring reporting be required every 2 years if a reportable event has occurred. Reportable events generally reflected what EPA considered as significant changes in production volume or site-limited status of a reportable substance. In addition to the proposed approach, two possible alternatives were discussed in the preamble. One of these two alternatives would require automatic reporting periodically on all reportable substances, regardless of whether a reportable event has occurred.

Comments. Seventeen commenters addressed the issue of recurring

reporting in their comments on the proposed rule. While all of these commenters agreed that some kind of recurring reporting is necessary to maintain a current data base, they all disagreed with EPA's proposed approach. Major points of their comments are summarized below:

First, many commenters contended that recurring reporting at 2-year intervals is not justified because production does not change that frequently for many chemicals. For chemicals that are produced in batches, such an approach would provide misleading information. Many maintained that EPA has underestimated the burden that would be imposed by this approach while it has overestimated the degree of data obsolescence for the 2-year period. They suggested that the frequency for recurring reporting be determined after the Agency has obtained initial submissions under this rule and compared the new data against the 1977 data to determine the extent to which the information has become out-of-date.

Second, a number of commenters indicated that EPA has underestimated the burden associated with the determination of whether a reportable event has occurred. They maintained that, in many cases, it would be less burdensome to simply submit a report. Some commenters argued that reporting triggers would penalize smaller companies more because they are less equipped to make a determination of whether reporting is necessary and would therefore tend to overreport.

Third, most of the commenters suggested that, if EPA decides that it must include a recurring reporting provision in the final rule, the Agency should consider requiring recurring reporting on all reportable chemicals every 5 years regardless of whether a reportable event has occurred during that period. The 5-year interval corresponds to the period used by the U.S. Census Bureau for its Census of Manufacturers. The commenters argued that this approach would provide EPA with a more complete update each time, though less frequently. EPA will be able to maintain a relatively current data base. The commenters contended that, even using EPA's own estimate, the Inventory would only be 62.5 percent obsolete and would still be more current than the present Inventory which EPA has been using for the past 8 years. The commenters also pointed out that this approach would be less burdensome to both EPA and industry, because the absence of reporting triggers would further simplify the reporting and recordkeeping requirements under this rule and would make EPA's compliance monitoring much easier.

EPA's response. EPA's original proposal that recurring reporting be triggered by the occurrence of a reportable event was based on the belief that this approach would allow the Agency to maintain a current data base without imposing an unreasonable burden on both the Agency and the submitters. After carefully reviewing the comments on this issue, EPA concludes that the proposed approach may not offer as many advantages as the Agency previously believed. Therefore, EPA agrees with the commenters that compliance with the requirements of this rule will be simpler and more straightforward if recurring reporting is not event-triggered.

The question of whether the determination of the occurrence of a reportable event is more burdensome than actual reporting will most likely vary from submitter to submitter. The Agency still believes that the reportable events governing recurring reporting, as proposed in the March 12 **Federal Register** notice, are not overly complicated. In most cases, it would simply require the comparison of production data every 2 years against the data previously reported. For those submitters who have the capability of storing the information in a computerized system, such a comparison should not be difficult. However, smaller companies which do not have access to computerized systems would have to perform such comparisons manually. Furthermore, recordkeeping requirements could, in most cases, become open-ended because current production data would be compared against the data last reported reqardless of its age.

If recurring reporting is triggered by events, EPA's compliance monitoring effort could become, in many cases, difficult and resource-intensive. The Agency would have to inspect production records before it could conclude that a manufacturer had a legitimate reason not to report during a particular reporting period. On the other hand, if recurring reporting is automatic, there will be fewer records to inspect because more manufacturers will have to report each time.

EPA believes that the provision governing recurring reporting should be part of the final rule and therefore disagrees with the recommendation that the frequency of recurring reporting be determined at a later date. By the time the initial submissions under this rule can be analyzed and compared against the 1977 data, the existing data would be almost 10 years old. There could have been successive changes at a plant site which could make such a comparison both difficult and inconclusive.

Based on these comments, EPA has adopted the concept of automatic recurring reporting every 4 years on all reportable substances with a site-specific production volume of 10,000 pounds or more. Although recurring reporting will occur less frequently, as compared to the originally proposed 2-year interval, each round of reporting will provide a much more complete update of the information. Based on its experience with the 1977 Inventory data, EPA believes that the 4-year reporting interval would be reasonable, since this would enable the Agency to maintain a relatively current data base without imposing an unreasonable reporting burden on industry.

C. Definition of Polymer

Comments. Eleven commenters urged EPA to broaden the "definition" of polymer by including such terminologies as "homopolymer," "copolymer," and "terpolymer," and/or to add the definition for polymer used under the section 5(h)(4) premanufacture notification polymer exemption rule (40 CFR 723.250(b)(11)).

EPA's response. EPA disagrees with these comments for two reasons. First, the terminologies used to describe polymers, as discussed in the proposed rule, already provide sufficiently broad coverage of substances with a polymeric structure. Some of the terminologies suggested by the commenters, i.e., "homopolymer," "copolymer," and "terpolymer," are already covered.

Second, the definition used for identifying polymers for consideration under the section 5(h)(4) polymer exemption rule, (40 CFR 723.250(b)(11)) is not the only criterion which determines whether a substance is qualified for exemption under that rule. Additional criteria must also be satisfied before a substance can be considered as eligible for exemption. Some of the criteria require that an eligible polymer not contain certain reactive functional groups or elements, not be a biopolymer or its synthetic equivalent, not contain less than 32.0 weight percent of atomic carbon, and must have a number-average molecular weight of at least 1,000. A substance that does not fully satisfy all of the criteria listed in the polymer exemption rule will not qualify for consideration even if it is a polymer defined under 40 CFR 723.250(b)(11). Therefore, it would

not be appropriate to include that definition without the accompanying criteria. If the criteria are also used, many polymers that are currently excluded from this rule would no longer be eligible for exclusion.

Since issuing the March 12 **Federal Register** notice, EPA has closely examined the completeness of the terminologies that were used in the proposed rule to identify polymers. As a result of this review, EPA has refined the terminologies for the final rule. The refined terminologies, which are discussed in Unit IV. above, identify virtually all those substances on the Inventory that are generally considered as polymers.

D. Chemical Exclusions

Comments. Almost all of the commenters agreed with the four chemical exclusion categories proposed by EPA. One commenter, however, strongly opposed excluding any chemical categories from the requirements of this rule. This commenter contended that the Inventory data base is too important to update only partially, and that section 8(b) of TSCA requires that the entire Inventory be kept current.

EPA's response. EPA believes that the exclusions proposed in the March 12 **Federal Register** notice are justified. Section 8(b) of TSCA requires the Agency to "* * * compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States." EPA has already been fulfilling this mandated obligation of keeping the Inventory current by continually adding to the list those newly manufactured substances that have completed section 5 PMN review, and by periodically removing from the Inventory those substances which were misreported when the Inventory was compiled and replacing them with the corrected chemical identities. The production volume and plant site data associated with the substances on the Inventory were not collected for the purposes of the section 8(b) Inventory. Rather, these data were reported under the authority of section 8(a). The "keep current" provision under section 8(b) is restricted to the addition of newly manufactured substances and does not apply to the production volume and plant site data associated with Inventory substances.

EPA must independently determine the need for collecting current data for these substances under section 8(a) of TSCA. The reasons for excluding the four categories were given in the March 12 **Federal Register** notice. If EPA were to require manufacturers to report data on every substance listed on the Inventory, this would result in an unnecessary reporting burden for the submitters, and the additional information would be "of no practical utility" to the Agency, thus violating the Paperwork Reduction Act's standards for information collection. However, the Agency has included in the final rule a provision which requires the reporting of current data on an excluded substance if such substance is the subject of a rule or an order issued under TSCA section 4, 5, 6, or 7. This provision will ensure the availability of current information if EPA has expressed a concern in the form of regulatory action on any of the substances otherwise excluded from the rule.

E. Petroleum Refinery Streams

Comments. Six commenters responded to EPA's request for comment on whether petroleum refinery streams should be excluded from this rule. They pointed out that, for TSCA purposes, EPA should be concerned about the potential health and environmental effects of products rather than intermediate process streams. The petroleum refinery streams are by their nature site-limited and maintained within closed systems. It is normally only the final petroleum products that leave the refinery and enter into commerce. The commenters argued that production volume data for refinery streams are unnecessary to the evaluation of products, and can be used inappropriately to give misleading results because they do not necessarily reflect the production volumes for commercial petroleum products. Furthermore, they also pointed out that the refining and manufacture of petroleum products is a mature technology, and no new refinery streams or petroleum products have ever been added to the Inventory through the PMN process. Nor are major changes in refinery technoloqy anticipated which would significantly change the composition of refinery streams. Therefore, the commenters believed that a broad-based Inventory update of petroleum production statistics would serve little purpose in the absence of technological developments or volume changes with potential impacts on human exposure or environmental release. Even if EPA can establish a need for such data, reporting under this rule will not be necessary because the data are already reported to the Department of Energy (DOE).

In addition to petroleum refinery streams, fifteen commenters also suggested additional substances for exclusion. EPA's responses to these suggestions are included in the public record for this rule and are not discussed in this unit.

EPA's response. EPA disagrees with the contention that intermediate process streams are inappropriate subjects of risk identification activities under TSCA. EPA has never limited its focus to only final products sold in commerce. Since intermediate products can raise concerns with regard to occupational exposure and release to the environment during production and processing operations, it is often necessary to know the total production volume of a stream which may appear as a fraction of numerous products. If such a fraction is hazardous, it is important to know the total volume in commerce. EPA routinely uses total production volume as a decision factor in preliminary risk identification activities.

Regarding the availability of production data at DOE, as claimed by these commenters, EPA has reviewed reports published by the DOE Energy Information Administration (EIA) and concluded that site-specific production volume information on refinery streams is not available. EPA believes that the rationale for site-specific information on petroleum refinery streams and products is basically the same as the rationale for any other types of substances. For the purposes of TSCA, EPA needs site-specific production volume information to support assessment of the number of workers who may be exposed at a site, the general population at risk in the area surrounding a site, and the chemical concentration in waterways downstream from each site. Site-specific information is also needed to support the assessment of economic impacts on affected companies in rulemaking under TSCA, and to determine the number of reports that can be expected for each reporting rule. Aggregated production data, which are readily available from EIA, do not provide useful information for any of the aforementioned analyses.

F. Duplicative Reporting

Comments. Two commenters requested that EPA clarify the potential duplicative reporting requirements between this rule and other TSCA section 8(a) rules including the yet-to-be proposed Comprehensive Assessment Information Rule (CAIR).

EPA's response. EPA recognizes that there could exist a potential for duplicative reporting among the various section 8(a) reporting rules, especially regarding production volume data. The Agency has decided that if similar information has been submitted under a

section 8(a) rule for a substance within the year preceding the start of a reporting period under this rule, the submitter will not be required to report the same information again for that reporting period.

G. Reporting by Importers

Comments. One commenter asked EPA to clarify in the final rule which person has the responsibility to report as the "importer" of a particular substance as was done in the PMN rule.

EPA's response. EPA recognizes that more than one person might meet the definition of "importer" in § 710.2(1) of the original Inventory Reporting Rule and § 704.3 of the general section 8(a) definitions for a particular import transaction involving a particular substance. For PMN purposes, to address the same problem, EPA decided to define a "principal importer" (40 CFR 720.3(z)), which in most cases will be the person most knowledgeable about a new chemical substance, and to require that person to submit the PMN. For this rule EPA has decided not to designate which "importer" should report for a particular import transaction involving a specific chemical substance. Rather, EPA will leave it to the parties to the transaction to determine which will report. Section 710.35(b) of the rule makes clear that EPA wants only a single report for such a transaction and that EPA will hold each "importer" liable if a required report is not submitted or does not contain the required information. Thus, if a company imports a substance several times in a single year at a particular site and uses different agents each time, the company could choose to submit the report combining all the imports, or it could designate one of the agents to submit the report, provided the agent had all the necessary information about all shipments.

H. Definition of "Parent Company" for Small Manufacturer Exemption

Comments. One commenter raised several concerns about the Agency's definition of the terms "parent company" and "small manufacturer;" specifically, the commenter noted that the total annual sales criterion of the small manufacturer definition should not include sales revenue of parent and/or subsidiary companies. In addition, the commenter noted that majority stock ownership should not be a determining factor in either the definition of "parent company" or the determination of responsibility for compliance with reporting requirements.

EPA's response. In an effort to simplify this final rule, EPA has deleted the text of several definitions from the rule, including the definitions of "parent company" and "small manufacturer." However, these definitions still are applicable to the final rule because they are incorporated by reference from the list of standard section 8(a) definitions contained in 40 CFR 704.3. The definitions in § 704.3 are not substantively different from the definitions which were contained in the proposed rule. Since this rule adopts the definitions contained in 40 CFR 704.3, the commenter's points remain relevant and are addressed by EPA below.

The Agency's definitions for the terms "parent company" and "small manufacturer" are part of the generic reporting provisions for section 8(a) rules, and already have been the subject of public comment. EPA received relatively few adverse comments on the generic definitions. The definition of "parent company" is based on the concept of ownership or control, which often is determined by majority stock ownership. This interpretation of the relationship between parent firm and subsidiary reflects prevailing judicial views on the issue.

The "small manufacturer" definition includes the total annual sales of parent firms and subsidiaries, if any, because EPA believes that a broadly defined sales criterion is the best available measure of a diversified firm's full financial resources available for regulatory compliance. For a more detailed discussion of this definition, see the preamble discussions of both the proposed and final Small Manufacturer Exemption Rules (proposed rule at 47 FR 27206, June 23, 1982; final rule at 49 FR 45425, November 16, 1984).

EPA does not intend that a parent firm owning a majority of stock in a subsidiary report on behalf of the subsidiary. Any company that is subject to reporting requirements under the terms of this rule (and that does not qualify for any of the exemptions in the rule) must submit the requisite information, even if that firm is a subsidiary of a larger company; it is up to the companies involved to determine internally who compiles the requisite data for submission. In the event of noncompliance, the legal principles of liability in parent-subsidiary relationships will govern.

I. Recordkeeping Requirements

Comments. Nine organizations expressed concern that the proposed recordkeeping requirements would be unnecessarily burdensome. In general, there are two main objections. First, the commenters believed that the proposed 5-year record retention time is not justified. A 2-year period would be consistent with standard practice. Second, they objected to the requirement that the submitters must document decisions not to report. Some indicated that this requirement would take away the benefits of the various exclusions and exemptions. Furthermore, all of the commenters urged EPA to provide detailed guidance regarding how and what records should be kept.

EPA's response. EPA agrees that, as proposed, the actual recordkeeping time could be open-ended. This is because a submitter, in order to make a determination of whether recurring reporting is necessary, would have to compare, for each reportable substance, current data against the information that was last reported. To make that comparison, the submitter would have to maintain records of the last reporting almost indefinitely, or until a reportable event occurs. This is one of the major disadvantages of the event-triggered approach for recurring reporting. Since the Agency has abandoned the previously proposed event-triggered approach, recordkeeping time for the purpose of this rule will no longer be open-ended. However, there must be adequate time from the closing of a reporting period for the Agency to analyze the submissions and to examine the corresponding records if an inspection of a particular plant site is found to be necessary. For this reason, EPA believes that a 2-year recordkeeping period, as suggested by the commenters, will not be sufficient. As a minimum, relevant records for a reporting period must be retained until the start of the next round of reporting, i.e., for the entire 4 years between 2 reporting periods.

The proposed requirement that submitters document decisions that reporting is not necessary was also closely related to the proposed event-triggered approach for recurring reporting. This requirement meant that the submitters should be able to show evidence, upon request, that recurring reporting was not necessary because a reportable event had not occurred during a particular period of time. Since most of the reportable events relate to production, the submitter's production records would have been sufficient evidence. Contrary to what many commenters believed, the Agency had never intended to extend the scope of this requirement to cover persons who are not subject to this rule or the excluded chemical categories. For the purposes of this rule, only those records that show the production volume, plant

site, and site-limited status of each reportable substance are to be maintained. In the case of low-volume substances, only production records must be kept to establish evidence that those substances are not reportable at the current production levels.

J. Data Aggregation and Confidentiality

Comments. Several commenters suggested that EPA publish prior to the effective date of the final rule methodologies that the Agency will use to aggregate production volume data for public disclosure. One commenter claimed that even aggregated data could be sensitive information, and thus EPA has no right to publish aggregated data.

A number of commenters urged that EPA allow confidentiality claims for the signing official of the reporting firm and the name and address of the technical contact. They also urged EPA to exempt submitters from resubstantiating claims for confidential chemical identities if such has been submitted to the Agency within 2 years before the final rule takes effect.

EPA's response. EPA has yet to determine which of the several data aggregation methodologies it is investigating will be used for production volume data collected under this rule. Even after a methodology is selected, it is unlikely that EPA will be able to describe it in great detail and still preserve the confidentiality of the information to be aggregated. EPA's rationale for not publishing a detailed description of the aggregation is to protect the confidentiality of the information.

EPA agrees with the comments on confidentiality claims for the signing official and the technical contact. The reporting form has been revised to permit these claims to be asserted.

EPA disagrees, however, with the comment that resubstantiation of confidentiality claims for chemical identity is unnecessary under this rule if such substantiation has been submitted within 2 years before the rule takes effect. EPA is actively reviewing claims of confidentiality asserted for information on substances added to the Inventory via the PMN process, and will also actively review claims asserted under this rule. This review requires up-to-date substantiation for the claims asserted. If the substantiation previously submitted is no longer valid, EPA must have new substantiation for the purposes of this rule. If the substantiation is still valid, the burden for resubmitting it should be minimal.

VI. Rulemaking Record

EPA has established a public record for this rulemaking (docket number OPTS 82015A), which is available for inspection in Rm. E-107, 401 M St., SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. These records include all basic information considered by the Agency in developing this rule.

The following documents are included in the rulemaking record:

(1) Analysis of Reporting Requirements for the Partial Update of the TSCA Inventory Data Base.

(2) Whether and How the TSCA Inventory Data Base Should Be Updated.

(3) Analysis of TSCA Section 8(a) Small Manufacturer Exemption.

(4) All comments on proposed rule and relevant documents and studies submitted in support of these comments.

(5) A summary of EPA's responses to the comments on the proposed rule.

(6) U.S. General Accounting Office Fact Sheet for the Chairman, Subcommittee on Commerce, Transportation and Tourism, Committee on Energy and Commerce, House of Representatives: Chemical Inventory—Environmental Protection Agency's Proposed Inventory Update, December 1985, GAO/RCED-86-47FS.

(7) A Summary of EPA's Responses to the GAO Report on the TSCA Inventory Update.

(8) Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

VII. Economic Impact

Based on exclusions and exemptions discussed in this preamble, EPA estimates that a total of 4,800 plant sites will be required to submit an initial report on at least one chemical substance.

EPA estimates that chemical manufacturers subject to this rule will spend approximately $5.5 million to report for the initial reporting period. These estimates include both fixed and variable costs.

The fixed costs per plant site to comply with the initial reporting requirements of this rule are estimated at $946. This includes time to become familiar with the reporting requirements, time to determine which of the substances produced at the site are covered by the rule, and time to develop an ongoing reporting mechanism. Maximum variable costs of compliance with the initial reporting are estimated at an additional $251 per reporting form that must be submitted. The variable costs include time to gather necessary data, and time to complete and review a reporting form including a determination of whether the information should be claimed as confidential.

The fixed and variable cost estimates were based on the number of hours that would be required to complete a reporting form. EPA estimates an average of 19 hours for a submitter to become familiar with the rule, determine which of the substances produced at a plant site is reportable, and develop a reporting mechanism. A maximum of 5 additional hours are estimated for a submitter to gather the necessary information and to complete and review a reporting form. At an average of one report per plant site, these estimates allow 24 hours for an average plant site's compliance. This figure could be lower or higher depending on the number of forms involved at a plant site.

For subsequent reporting years (every fourth year following the initial reporting year), all plant sites manufacturing a reportable substance will have to file a new reporting form. The total cost of reporting in subsequent reporting years is projected at $2.2 million. This estimate includes costs for reviewing the rule, for making the determination, and for completing a reporting form.

A more detailed economic impact analysis of the requirements of this rule is included in the rulemaking record.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not "major" because it will not have an annual effect of $100 million or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This rule contains a small manufacturer exemption which generally exempts small manufacturers and importers from all reporting requirements. Therefore, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA has determined

that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements contained in this rule were submitted for approval to OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements in this final rule were approved by OMB and assigned control number 2070-0070.

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Inventory, Hazardous materials, Reporting and recordkeeping requirements.

Dated: May 29, 1986.

Lee M. Thomas,

Administrator.

PART 710—[AMENDED]

Therefore, 40 CFR Part 710 is amended as follows:

1. The authority citation for Part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. By designating the existing §§ 710.1 through 710.8 as Subpart A, the heading for which reads as follows:

Subpart A—Compilation of the Inventory

3. By adding a new Subpart B, to read as follows:

Subpart B—Partial Updating of the Inventory Data Base

Sec.

Subpart B—Partial Updating of the Inventory Data Base

§ 710.23 Definitions.

The definitions in § 704.3 of this chapter and § 710.2 of this Part apply except as provided in this section.

(a) "Master Inventory File" means EPA's comprehensive list of chemical substances which constitute the Chemical Substances Inventory compiled under section 8(b) of the Act. It includes substances reported under Subpart A of this Part and substances reported under Part 720 of this chapter for which a Notice of Commencement of Manufacture or Import has been received under § 720.120 of this chapter.

(b) "Nonisolated intermediate" means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture.

(c) "Site-limited" means a chemical substance is manufactured and processed only within a site and is not distributed for commercial purposes as a substance or as part of a mixture or article outside the site. Imported substances are never site-limited.

§ 710.25 Chemical substances for which information must be reported.

Any chemical substance which is in the Master Inventory File at the beginning of a reporting period described in § 710.33, unless the chemical substance is specifically excluded by § 710.26.

§ 710.26 Chemical substances for which information is not required.

The following categories of chemical substances are excluded from the reporting requirements of this subpart. However, a chemical substance described in paragraphs (a), (b), or (c) of this section is not excluded from the reporting requirements of this subpart if that substance is the subject of a rule proposed or promulgated under section 4, 5(a)(2), 5(b)(4), or 6 of the Act, or is the subject of an order issued under section 5(e) or 5(f) of the Act, or is the subject of relief that has been granted under a civil action under section 5 or 7 of the Act.

(a) *Inorganic chemical substances.* Any chemical substance which does not contain carbon or contains carbon only in the form of carbonato [$=CO_3$], cyano [$-CN$], cyanato [$-OCN$], isocyano [$-NC$], or isocyanato [$-NCO$] groups, or the chalcogen analogues of such groups.

(b) *Polymers.* (1) Any chemical substance described with the word fragments "*polym*", "*alkyd", or "*oxylated" in the Chemical Abstracts Service Index or Preferred Nomenclature in the Chemical Substance Identities section of the 1985 edition of the Inventory or in the Master Inventory File, where the asterisk (*) indicates that any sets of characters may precede, or follow, the character string defined.

(2) Any chemical substance which is identified in the 1985 edition of the Inventory or the Master Inventory File as siloxane and silicone, silsesquioxane, a protein (albumin, casein, gelatin, gluten, hemoglobin), an enzyme, a polysaccharide (starch, cellulose, gum), rubber, or lignin. This exclusion, however, does not apply to a chemical substance which has been hydrolyzed, depolymerized, or chemically modified to the extent that the final product is no longer polymeric in structure.

(c) *Microorganisms.* Any combination of chemical substances that is a living organism, such as bacteria, eimeria, fungi, and yeasts. Any chemical substance produced from such a living organism is reportable unless otherwise excluded.

(d) *Naturally occurring chemical substances.* Any naturally occurring chemical substance, as described in § 710.4(b). The applicability of this exclusion is determined in each case by the specific activities of the person who manufactures the substance in question. Some chemical substances can be manufactured both as described in § 710.4(b) and by means other than those described in § 710.4(b). If a person described in § 710.28 manufactures a chemical substance by means other than those described in § 710.4(b), the person must report regardless of whether the substance also could have been produced as described in § 710.4(b). Any chemical substance that is produced from such a naturally occurring chemical substance described in § 710.4(b) is reportable unless otherwise excluded.

§ 710.28 Persons who must report.

Except as provided in §§ 710.29 and 710.30, the following persons are subject to the requirements of this subpart. Persons must determine whether they must report under this § 710.28 for each chemical substance that they manufacture at an individual site.

(a) *Persons subject to initial reporting.* Any person who manufactured for commercial purposes 10,000 pounds (4,540 kilograms) or more of a chemical substance described in § 710.25 at any single site owned or controlled by that person at any time during the person's latest complete corporate fiscal year before August 25, 1986.

(b) *Persons subject to recurring reporting.* Any person who manufactured for commercial purposes

10,000 pounds (4,540 kilograms) or more of a chemical substance described in § 710.25 at any single site owned or controlled by that person at any time during the person's latest complete corporate fiscal year before August 25, 1990, or before August 25 at four-year intervals thereafter.

(c) *Special provisions for importers.* For purposes of paragraphs (a) and (b) of this section, the site for a person who imports a chemical substance described in § 710.25 is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction. The import site may in some cases be the organization's headquarters in the U.S. (See also § 710.35(b).)

§ 710.29 Persons not subject to this subpart.

A person described in § 710.28 is not subject to the requirements of this subpart if that person qualifies as a small manufacturer as that term is defined in § 704.3(r) of this chapter. Notwithstanding this exclusion, a person who qualifies as a small manufacturer is subject to this subpart with respect to any chemical substance that is the subject of a rule proposed or promulgated under section 4, 5(b)(4), or 6 of the Act, or is the subject of an order in effect under section 5(e) of the Act, or is the subject of relief that has been granted under a civil action under section 5 or 7 of the Act.

§ 710.30 Activities for which reporting is not required.

A person described in § 710.28 is not subject to the requirements of this subpart with respect to any chemical substance described in § 710.25 that the person manufactured or imported under the following circumstances:

(a) The person manufactured or imported the chemical substance described in § 710.25 solely in small quantities for research and development,

(b) The person imported the chemical substance described in § 710.25 as part of an article,

(c) The person manufactured the chemical substance described in § 710.25 in a manner described in § 720.30 (g) or (h) of this chapter.

§ 710.32 Information to be reported.

Any person who must report under this subpart must submit the information prescribed in this section for each chemical substance described in § 710.25 that the person manufactured for commercial purposes in an amount of 10,000 pounds (4,540 kilograms) or more at a single site during a corporate fiscal year described in § 710.28. (The site for a person who imports a chemical substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction, and may in some cases be the organization's headquarters office in the U.S.). A respondent to this subpart must report information in writing or by computer tape as prescribed in this section, to the extent that such information is known to or reasonably ascertainable by that person. A respondent to this subpart must report information that applies to the specific corporate fiscal year for which the person is required to report. Information on chemical substances for which the chemical identities are claimed confidential under § 710.38 must be submitted in writing.

(a) *Reporting in writing.* Any person who chooses to report information to EPA in writing must do so by completing the reporting form contained in § 710.39, and must submit a separate form for each site for which the person is required to report. Information on substances for which the chemical identity is claimed confidential under § 710.38 must be submitted in writing on a separate reporting form; a respondent to this subpart must not report confidential and non-confidential chemical substance identities on the same reporting form.

(b) *Reporting by computer tape.* Any person who chooses to report information to EPA by means of computer tape must submit the information prescribed in this paragraph (b), and must report separately for each plant site for which the person is required to report. Computer tape submitted in response to this subpart must meet EPA specifications, as described in the instruction booklet identified in § 710.39(b). Persons reporting by means of computer tape also must submit a separate reporting form, with certain basic data elements completed, as specified below, for each site for which the person is required to report. The information to be reported is as follows:

(1) On the reporting form, the name, address, city, State, Zip code, and telephone number of a person who will serve as technical contact for the respondent company, and will be able to answer questions about the information submitted by the company to EPA.

(2) On the reporting form, a certification statement signed and dated by an authorized official of the respondent company, and a written statement on the form that information is being submitted by means of computer tape. The computer tape shall be enclosed with the reporting form.

(3) On the computer tape, the specific chemical name and Chemical Abstracts Service (CAS) Registry Number of each chemical substance for which reporting is required under this subpart. A respondent to this subpart may use other chemical identification numbers in lieu of CAS Registry Numbers when a CAS Registry Number is not known to the respondent as provided in the instruction booklet identified in § 710.39(b), including EPA-designated Accession Numbers for confidential substances, EPA-assigned numbers for bona fide or Premanufacture Notification submissions or Test Market Exemption Applications, or original Inventory form numbers.

(4) On the computer tape, the name, street address, city, State, and Zip code of each site at which 10,000 pounds (4,540 kilograms) or more of a chemical substance for which reporting is required under this subpart is manufactured or imported. (The site for a person who imports a chemical substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction, and may in some cases be the organization's headquarters office in the U.S.). A respondent to this subpart must include the appropriate Dun and Bradstreet Number for each plant site reported.

(5) On the computer tape, a statement for each substance for which information is being submitted indicating whether the substance is manufactured in the United States or imported into the United States.

(6) On the computer tape, a statement for each substance for which information is being submitted indicating whether the substance is site-limited.

(7) On the computer tape, the total volume (in pounds) of each subject chemical substance manufactured or imported at each site. This amount must be reported to two significant figures of accuracy provided that the reported figures are within ±10 percent of the actual volume.

§ 710.33 When to report.

All information reported to EPA in response to the requirements of this subpart must be submitted during an applicable reporting period. The following reporting periods are prescribed for this subpart.

(a) *Initial reporting period.* The first reporting period is from August 25, 1986

to October 10, 1986. Any person described in § 710.28(a) must report during this period for each chemical substance described in § 710.25 that the person manufactured during the corporate fiscal year described in § 710.28(a).

(b) *Recurring reporting periods.* The first recurring reporting period is from August 25, 1990 to October 10, 1990. Subsequent recurring reporting periods are from August 25 to October 10 at 4-year intervals thereafter. Any person described in § 710.28(b) must report during the appropriate reporting period for each chemical substance described in § 710.25 that the person manufactured during the applicable corporate fiscal year described in § 710.28(b).

§ 710.35 Duplicative reporting.

(a) *With regard to section 8(a) rules.* Any person subject to the requirements of this subpart who previously has complied with reporting requirements of a rule under section 8(a) of the Act by submitting the information described in § 710.32 for a chemical substance described in § 710.25 to EPA, and has done so within one year of the start of a reporting period described in § 710.33, is not required to report again on the manufacture of that substance at that site during that reporting period.

(b) *With regard to importers.* This subpart requires that only one report be submitted on each import transaction involving a chemical substance described in § 710.25. When two or more persons are involved in a particular import transaction and each person meets the Agency's definition of "importer" as set forth in § 710.2(1) and § 704.3 of this chapter, they may determine among themselves who should submit the required report; if no report is submitted as required under this subpart, EPA will hold each such person liable for failure to report.

§ 710.37 Recordkeeping requirements.

Each person who is subject to the reporting requirements of this subpart must maintain records that document any information reported to EPA. For substances that are manufactured or imported at less than 10,000 pounds annually, volume records must be maintained as evidence to support a decision not to submit a report. Records relevant to reporting during a reporting period described in § 710.33 must be retained for a period of four years beginning with the effective date of that reporting period.

(Approved by the Office of Management and Budget under control number 2070-0070)

§ 710.38 Confidentiality.

(a) Any person submitting information under this subpart may assert a business confidentiality claim for the information. The procedures for asserting confidentiality claims are described in the instruction booklet identified in § 710.39. Information claimed as confidential in accordance with this section and those instructions will be treated and disclosed in accordance with the procedures in Part 2 of this chapter.

(b) A person may assert a claim of confidentiality for the chemical identity of a specific chemical substance only if the identity of that substance is treated as confidential in the Master Inventory File as of the time the report is submitted for that substance under this subpart.

(c) To assert a claim of confidentiality for the chemical identity of a specific chemical substance, the person must take the following steps:

(1) The person must report on the form contained in § 710.39, not by computer tape.

(2) The person must submit with the report detailed written answers to the following questions signed and dated by an authorized official.

(i) What harmful effects to your competitive position, if any, do you think would result from the identity of the chemical substance being disclosed in connection with reporting under this subpart? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(ii) How long should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

(iii) Has the chemical substance been patented? If so, have you granted licenses to others with respect to the patent as it applies to the chemical substance? If the chemical substance has been patented and therefore disclosed through the patent, why should it be treated as confidential?

(iv) Has the identity of the chemical substance been kept confidential to the extent that your competitors do not know it is being manufactured or imported for a commercial purpose by anyone?

(v) Is the fact that the chemical substance is being manufactured or imported for a commercial purpose available to the public, for example in technical journals, libraries, or State, local, or Federal agency public files?

(vi) What measures have you taken to prevent undesired disclosure of the fact that this chemical substance is being manufactured or imported for a commercial purpose?

(vii) To what extent has the fact that this chemical substance is manufactured or imported for commercial purposes been revealed to others? What precautions have been taken regarding these disclosures? Have there been public disclosures or disclosures to competitors?

(viii) Does this particular chemical substance leave the site of manufacture in any form, as product, effluent, emission, etc.? If so, what measures have you taken to guard against discovery of its identity?

(ix) If the chemical substance leaves the site in a product that is available to the public or your competitors, can the substance be identified by analysis of the product?

(x) For what purpose do you manufacture or import the substance?

(xi) Has EPA, another Federal agency, or any Federal court made any pertinent confidentiality determinations regarding this chemical substance? If so, please attach copies of such determinations.

(3) If any of the information contained in the answers to the questions is asserted to contain confidential business information, the person must mark that information as "trade secret," "confidential," or other appropriate designation.

(d) If no claim of confidentiality accompanies information at the time it is submitted to EPA under this subpart or if substantiation required under paragraph (c) of this section is not submitted with the reporting form, EPA may make the information available to the public without further notice to the submitter.

§ 710.39 Reporting form and instructions for submitting information.

(a) All persons submitting written information in response to the requirements of this subpart must use original copies of the form contained in this § 710.39.

(b) Complete instructions for completing the reporting form and

preparing a computer tape report are given in the EPA publication entitled "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base." Reporting forms and instruction booklets may be obtained from the following address:

OTS Document Control Officer (Room E-201), U.S. Environmental Protection Agency, Office of Toxic Substances (TS-790), 401 M Street, SW., Washington, DC 20460, Attention: Inventory Update Rule, Telephone: (202) 382-3698 or (202) 755-4880.

(c) Completed reporting forms and computer tapes must be submitted to the address specified in § 710.39(b) above.

(d) The reporting form is as follows:

BILLING CODE 6560-50-M

IMPORTANT: Before completing this form, carefully read the accompanying instructions

Form Approved OMB 2070-0070
Approval expires 11-30-87

US Environmental Protection Agency

EPA

Partial Updating of TSCA Inventory Data Base
Production and Site Report
(Section 8(a) Toxic Substances Control Act 15 USC 2607)

Report Number

I. Certification Statement: I hereby certify to the best of my knowledge and belief that (1) all information entered on this form is complete and accurate, and (2) the confidentiality statements on the back of this form are true as to that information for which I have asserted a confidentiality claim.

FORM **U**

Signature	Date	Name/Title (Type or Print)

II. Technical Contact (Name, Company, Street address, City, State, ZIP Code)	**III. Plant Site** (Name, Street address, City, State, ZIP Code)
Telephone No (Include Area Code) CBI ☐	Dun & Bradstreet Number

IV. Chemical Substance Identity/Activity/Confidentiality

a	b	c	d	e	f	g	h
LINE NO	CAS Registry and/or Other Identifying Number / Original Inventory Report Line No	A, B, C, F, P or T Codes A - Accession No B - Bona Fide No C - CAS Registry No F - Original Inventory Report No P - PMN No T - TMEA No	All Chemical Substance Identities on This Form Are Claimed ☐ Confidential ☐ Nonconfidential — Specific Chemical Name	Activity M Manufacture I Import	Site Limited	Plant Site CBI Claim	Production Volume (pounds)
1				CBI ☐	CBI ☐	CBI ☐	CBI ☐
2				CBI ☐	CBI ☐	CBI ☐	CBI ☐
3				CBI ☐	CBI ☐	CBI ☐	CBI ☐
4				CBI ☐	CBI ☐	CBI ☐	CBI ☐
5				CBI ☐	CBI ☐	CBI ☐	CBI ☐
6				CBI ☐	CBI ☐	CBI ☐	CBI ☐
7				CBI ☐	CBI ☐	CBI ☐	CBI ☐
8				CBI ☐	CBI ☐	CBI ☐	CBI ☐
9				CBI ☐	CBI ☐	CBI ☐	CBI ☐
10				CBI ☐	CBI ☐	CBI ☐	CBI ☐

EPA Form 7740-8 (12-85)

Where To Get Supplies and Send Completed Forms:

TSCA Inventory Update Form U and a copy of the instruction booklet may be obtained from, and completed forms should be sent to:

OTS Document Control Officer (TS-790)
U.S. Environmental Protection Agency
401 M Street, S.W., Washington, DC 20460
Attn: Inventory Update Rule
(202) 382-3698 or (202) 755-4880

Concerning EPA Disclosure of Information

If you submit information to EPA and claim any of it as confidential, EPA will publicly disclose that information only as allowed by the procedures set forth in 40 CFR Part 2. If no such claim accompanies the information when it is received, EPA may make that information public without further notice to you.

Confidentiality Statements

Chemical substance identity and other information reported to EPA on the front of this form may be claimed confidential by checking the appropriate CBI boxes in Blocks II and IV. In certifying this form, the person signing in Block I attests to the truth of the following four statements concerning all information claimed as confidential:

1. My company has taken measures to protect the confidentiality of the information, and it intends to continue to take such measures.

2. The information is not, and has not been, reasonably obtainable without our consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding).

3. The information is not publicly available elsewhere.

4. Disclosure of the information would cause substantial harm to our competitive position.

The person signing in Block I also attests to the truth of the appropriate statement(s) below concerning the information specifically claimed confidential for the particular chemical substance. By checking the CBI box under:

(II) Technical Contact/Company Identity: I assert that the linkage between my company identity (including the names appearing in Blocks I and II) and the information submitted on this form is confidential. (Note: checking this box does not claim plant site as confidential).

(IVd) Chemical Identity: I assert that the identities of all of the chemical substances on this form are confidential.

(IVe) Manufacture/Import: I assert that whether I manufacture or import the specific chemical substance is confidential.

(IVf) Site Limited: I assert that whether the specific chemical substance is distributed for a commercial purpose outside the plant site identified in Block III is confidential.

(IVg) Plant Site: I assert that the link of the specific chemical substance to the plant site identified in Block III is confidential.

(IVh) Production Volume: I assert that the production volume of the specific chemical substance for the plant site identified in Block III is confidential.

When claiming that the identity of a chemical substance is confidential, you must provide written substantiation for such claim (see reporting instructions). Failure to do so may result in EPA making that information public without further notice to you.

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federal register

Thursday
June 12, 1986

Part III

Environmental Protection Agency

40 CFR Parts 122 and 403
Water Pollution; General Pretreatment Regulations for Existing and New Sources; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 403

[FRL 2950-3]

Water Pollution; General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing revisions to the General Pretreatment Regulations (40 CFR Part 403). The proposed modifications are intended to clarify existing regulations; respond to recommendations of the Pretreatment Implementation Review Task Force (PIRT); and conform the pretreatment regulations, where appropriate, to the National Pollutant Discharge Elimination System (NPDES) permit regulations (40 CFR Part 122), and changes thereto published September 26, 1984 (49 FR 37998).

DATES: Comments must be received on or before August 11, 1986.

ADDRESS: Comments should be addressed to Hans I. E. Bjornson, Permits Division (EN-336), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: George E. Young, Permits Division (EN-336), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9539.

SUPPLEMENTARY INFORMATION:

I. Background

On June 26, 1978, EPA promulgated the General Pretreatment Regulations, which established mechanisms and procedures for controlling the introduction of wastes from industry and other non-domestic sources into publicly owned treatment works (POTWs) (43 FR 27736). Following promulgation, several parties brought actions in Federal court challenging these regulations. Pursuant to the terms of a settlement agreement entered into by EPA and some of the parties to the litigation, the Agency promulgated amendments to the General Pretreatment Regulations for Existing and New Sources on January 28, 1981 (46 FR 9404).

Several provisions of the amended regulations were subsequently challenged. In National Association of Metal Finishers et al. v. EPA, 719 F.2d 624 (3d Cir. 1983), the United States Court of Appeals for the Third Circuit upheld the removal credit provision (§ 403.7) and the combined wastestream formula (§ 403.6(e)) in their then existing forms. The Court also remanded to EPA the definitions of "pass through," "interference," and "new source" for further action consistent with the Clean Water Act (CWA) and the Court's opinion. Essentially, the Court held that the definition of "interference" must provide for liability by the industrial user only when the user caused inhibition or disruption of the treatment processes. The court ruled that the definition of "pass through" had to be repromulgated according to the required procedures of the Administrative Procedures Act; the Court did not rule on the definition itself. The Court also held that the definition of "new source" was inconsistent with the CWA because it excluded sources that would be considered new sources under the Act.

On February 10, 1984, the Agency published a final rule in the **Federal Register** that suspended the definitions of "new source" (§ 403.3(k)), "interference" (§ 403.3(i)) and "pass through" (§ 403.3(n)). The "new source" definition was published as a final rule on July 10, 1984 (49 FR 28058). New definitions of "interference" and "pass through" were proposed by EPA on June 19, 1985 (50 FR 25526).

The Court in the NAMF decision also held that Section 301(l) of the Clean Water Act prohibited EPA from granting fundamentally different factors variances for toxic pollutants covered by categorical pretreatment standards. The Agency petitioned the Supreme Court to review this aspect of the Third Circuit's decision. On February 27, 1985, the Supreme Court overruled the Third Circuit's decision on FDF variances (Chemical Manufacturers Assn., et al. v. Natural Resources Defense Council, No. 83-1013 (1985)). Under the Supreme Court's decision, EPA has authority to grant FDF variances for toxic pollutant limits. Consistent with that decision, the Agency has reinstated the FDF provision (§ 403.13) in its original form (50 FR 38809, September 25, 1985).

Subsequent to the NAMF decision, EPA promulgated revisions to the removal credit provision (§ 403.7) to simplify the procedures for documenting consistent removal and obtaining removal credits. These revisions were published in the **Federal Register** on August 3, 1984 (49 FR 31212). The amended provision was recently struck down by the United States Court of Appeals for the Third Circuit in Natural Resources Defense Council, Inc. v. EPA, No. 85-3012 (3d Cir. 1986). EPA is reviewing this decision to determine the appropriate response.

Today's proposed revisions are intended to accomplish several goals. They make a number of substantive changes to address short-comings in the existing regulations that have been

discovered since the January 28, 1981, pretreatment amendments were promulgated. The revisions also respond to recommendations of the Pretreatment Implementation Review Task Force (PIRT). PIRT was established, in accordance with the Federal Advisory Committee Act, by the Administrator of EPA on February 3, 1984, to provide the Agency with recommendations on improving implementation of the national pretreatment program. The Task Force, which was made up of representatives of POTWs, States, industry, environmental groups and EPA Regional Offices, arrived at its recommendations through consensus among the members after extensive discussion. PIRT issued its Interim Report to the Administrator on June 12, 1984. The Task Force's Final Report to the Administrator was issued on January 30, 1985. Recommendations were made in the areas of program simplification and clarification, enforcement, resources, and roles and relationships within the national pretreatment program. The recommendations generally focus on the need for guidance, training programs, technical assistance, policy statements and regulatory amendments in these areas.

Finally, the revisions will make several provisions of the pretreatment regulations compatible, where appropriate, with their counterparts in the NPDES regulations (40 CFR Parts 122, 123, 124, and 125). Consistent regulations are generally appropriate because in many cases the logic supporting the NPDES provision is equally applicable in the pretreatment context. EPA promulgated final revisions to the NPDES regulations on September 26, 1984 (49 FR 38049).

There are twenty-eight amendments being proposed today. These fall into five major areas: (1) Pretreatment standards and requirements, (2) POTW pretreatment program requirements, (3) POTW and State pretreatment program approval procedures, (4) reporting and compliance monitoring, and (5) miscellaneous provisions. The overall impact of the proposal is to make the regulations easier to understand, reduce burdens on the regulated community, and generally improve the implementation of the national pretreatment program.

The proposed revisions do not alter the existing regulatory framework. Nor will they affect the ability of POTWs or industrial users to comply in a timely manner with existing or forthcoming pretreatment standards and other regulatory requirements. General prohibitive discharge standards, specified in § 403.5 of the regulations, are unchanged. Similarly, categorical pretreatment standards are unaffected by this proposal. As before, most major POTWs are still required to develop and implement local pretreatment programs, pursuant to § 403.8 and § 403.9, to ensure that non-domestic users of the municipal system comply with applicable pretreatment requirements. Approval of State requests for authority to administer the pretreatment program will also continue as before. The basic reporting requirements of the regulations (e.g., § 403.12) remain intact.

II. Proposed Changes

A. Pretreatment Standards and Requirements

1. Calculation of Equivalent Mass and Concentration Limits (40 CFR 403.6(c))

a. *Existing rule.* National categorical pretreatment standards establish limits on pollutants discharged to POTWs by certain industries. In some cases, the categorical standards set limitations in terms of pollutant concentration. Other standards establish limitations in terms of both concentration and pollutant mass, which is established on the basis of production (i.e., x pounds of pollutant per unit of production). However, in certain categorical standards EPA has set only production-based mass limitations. The purpose of such limitations is generally to reflect the use of flow reduction as part of the technological model for establishing the standard.

Production-based limitations are administratively more difficult for the Control Authority to implement than concentration limitations. To test for compliance with a concentration-based standard, one need only take a wastewater sample, measure the concentration of the regulated pollutant(s), and compare this result to the standard. For the production-based standards, however, one must also measure the flow of the regulated waste-stream to translate the concentration measurement into a pollutant mass and determine the discharger's production rate at the time of sampling. The most difficult step in determining whether an industrial user is in compliance with a production-based standard, according to PIRT, is determining the applicable production rate. This rate will vary over time, and in some industries will even fluctuate daily.

For direct dischargers, the NPDES regulations simplify the implementation of production-based mass effluent limitations guidelines by requiring that the permit limits be based upon a reasonable measure of the actual production. Generally, this should be a long-term average of the facility's production. The permit (or a fact sheet describing the basis for the permit) must specify the production level that was used to derive the permit limit. This process establishes a single mass limit that the permittee must meet, even though production and flows may vary over time. (However, if production and flows change significantly, the permittee must report these changes and the permitting authority may modify the permit accordingly. See 40 CFR 122.42(b) and 122.62(a)(1).)

The current pretreatment regulations contain no specific provisions relating to translation of production-based limitations into mass or concentration limits. Thus, an industrial user's compliance is determined based upon the categorical standard itself since users must at all times meet the standard. To determine compliance with production-based standards, the production and flow at the time of compliance evaluation must also be determined (since any monitoring results would be expressed in terms of concentration).

b. *Proposed change.* PIRT stated that POTWs would like to translate production-based categorical pretreatment standards into enforceable mass limits. Many POTWs would also like to convert these mass limits into equivalent concentration limits. Such conversions simplify compliance evaluation as noted above. However, PIRT indicated that POTWs are unsure of whether this is allowed under the pretreatment regulations, and, to the extent allowed, of the methodology to be used and the legal status of the equivalent limits. As explained in EPA's Guidance Manual for the Use of Production Based Categorical Pretreatment Standards and the Combined Wastestream Formula (1985), the existing regulations allow Control Authorities to calculate equivalent concentration (or mass) limits as a tool for determining compliance with applicable categorical standards. However, an industrial user's compliance with such equivalent limits does not relieve the user of the legal requirement to be in compliance with the production-based standard itself. Thus, the equivalent mass and concentration limits do not shield the industrial user from direct EPA or State enforcement of the production-based standard. Obviously, this undercuts the benefits of the equivalent limits.

Based on PIRT's recommendation, EPA is proposing today to revise the

pretreatment regulations to change the legal status of equivalent concentration or mass limits calculated by Control Authorities from production-based categorical standards. Today's proposal adds a new paragraph to §403.6(c) stating that these equivalent limits, when properly calculated using procedures included in today's proposal, will be deemed pretreatment standards for the purposes of section 307(d) of the Clean Water Act and shall be enforceable as such. In addition, the proposal specifically states that industrial users will be required to comply with the equivalent limits, when established, in lieu of the promulgated categorical standards from which these limits were derived. As a result, industrial users that are in compliance with equivalent concentration or mass limits calculated in accordance with the procedures specified in today's proposal will not be subject to direct EPA enforcement actions based on the production-based standard itself. Rather the equivalent limits will be federally enforceable. The proposed rule will support the efforts of POTWs to establish such limits as part of their approved pretreatment programs.

As part of today's proposal, EPA is also setting forth in the regulations the procedures to be used by Control Authorities to calculate equivalent concentration and mass limits for production-based categorical standards. To convert a production-based standard to a mass limitation, the limit in the standard is multiplied by an appropriate production rate. Consistent with 40 CFR 122.45(b)(2) of the NPDES regulations, this production rate is based not upon the designed production capacity but rather upon a reasonable measure of the facility's actual long-term average daily production (e.g., the daily average during a representative year). This is to ensure that facilities operating below the full capacity are treating their wastewater to the extent required by the Clean Water Act's technology-based pretreatment requirements, rather than reducing their level of treatment due to unused production capacity. Such an approach also ensures equity among facilities in the same industry, regardless of their design capacity.

To arrive at a concentration limitation, this mass limitation is further divided by the industrial user's average daily flow rate of process wastewater regulated under the standard. Like the production rate, this flow rate must be based on a reasonable measure of the actual long-term average daily flow of the regulated process wastewater. The same production and flow figures should be used for calculating both the maximum daily and maximum monthly average (or 4-day average) limitations. Examples of these calculations appear below.

Method No. 1. Equivalent Mass Limits.

Standards:
- Daily maximum ..... .004 kg Cu/ton of product.
- Maximum monthly average... .002 kg Cu/ton of product.

Conditions:
- Production ..... 500 ton of product/day, 12-month average.
- Flow ..... Not Applicable.

Calculations:
- .004 kg Cu/ton × 500 ton/day = 2 kg Cu/day.
- .002 kg Cu/ton × 500 ton/day = 1 kg Cu/day.

Equivalent Limits:
- Daily maximum ..... 2 kg Cu/day.
- Maximum monthly average... 1 kg Cu/day.

Method No. 2. Equivalent Concentration Limits

Standards:
- Daily Maximum ..... .004 kg Cu/ton of product.
- Maximum Monthly Average.. .002 kg Cu/ton of product.

Conditions:
- Production ..... 500 ton of product/day, 12-month average.
- Flow ..... .2 million gal/day, 12-month average.

Calculations:

$$\frac{.004 \text{ kg Cu/ton} \times 500 \text{ ton/day}}{.2 \text{ mil gal/day} \times 3.78^*} = 2.6 \text{ mg/l}$$

$$\frac{.002 \text{ kg Cu/ton} \times 500 \text{ ton/day}}{.2 \text{ mil ga./day} \times 3.78^*} = 1.3 \text{ mg/l}$$

Equivalent Limits:
- Daily Maximum ..... 2.6 mg/l Cu.
- Maximum Monthly Average.. 1.3 mg/l Cu.

* This factor converts kg/mil gal to mg/l.

Today's proposal also requires the industrial user to immediately notify the Control Authority if either the long-term production or flow rate changes substantially. Periodic fluctuations should not be reported under this requirement; these variations are factored into the development of the categorical standard. However, significant additions to or reductions in the production level that will represent the facility's production over the long-term must be reported. The Control Authority will then adjust the equivalent mass and concentration limits to reflect the changes.

EPA is also proposing to revise the periodic compliance report in § 403.12(e) to require that for industrial users subject to production-based categorical pretreatment standards, the compliance reports described in that section must include the user's actual average production rate for the reporting period. This is to ensure that the Control Authority has up-to-date production information.

2. Centralized Waste Treatment (40 CFR 403.6(e))

a. *Background.* The centralized treatment of industrial wastewater has received increased attention recently. The number of centralized waste treatment (CWT) facilities also has increased as compliance deadlines for categorical pretreatment standards are reached. Therefore, it is appropriate to provide the public with a statement of EPA's policy for regulating CWT facilities. Today's preamble will discuss the requirements applicable to CWT facilities and the regulatory changes proposed by the Agency to clarify these requirements.

Typically, to comply with CWA requirements a plant will install the necessary control system(s) on site to treat its process wastewater prior to discharging the effluent either directly into receiving waters or indirectly through a POTW. For large industrial concerns, on-site treatment is likely to be the most cost-effective treatment alternative. However, due to construction and operation and maintenance costs, on-site treatment may not be preferable for some smaller plants generating small amounts of process wastewater. CWT represents an alternative approach to on-site treatment, particularly for this latter group. CWT facilities are constructed to treat industrial waste from multiple contributors. Instead of constructing facilities to provide on-site treatment of its effluent, a plant conveys its wastewater through pipes, by truck, in drums, or by some other means to a CWT facility. The CWT facility treats the wastewater, frequently in conjunction with other compatible wastes, using predominantly the same technology as would be used had the individual industrial contributor established treatment facilities on-site. The CWT facility then discharges the treated wastewater to either a receiving stream (subject to NPDES permitting requirements) or to a POTW (subject to pretreatment requirements).

Several factors have contributed to the growing interest in CWT. First, used appropriately, CWT can result in considerable cost savings over the construction and operation and maintenance of on-site treatment at individual plants. Second, CWT facilities are generally operated by professional waste handlers and

therefore offer the possibility of more effective treatment and management of industrial users' waste. Finally, CWT offers increased potential for resource recovery, which often requires large volumes of waste in order to be cost-effective. Of course, the full realization of these benefits is contingent upon assuring that only compatible wastes are combined at CWT facilities.

A CWT facility that is a direct discharger is required to have an NPDES permit. The permit must impose all applicable permit requirements under sections 301 and 402 of the Act, including technology-based requirements based on best available technology (BAT) and best conventional control technology (BCT). The Agency can issue the permit either to the CWT facility alone or jointly to the CWT and one or more of its contributors. In Decision of the General Counsel No. 43 (June 1976), the Agency discussed its statutory authority to provide in an NPDES permit that a directly discharging CWT facility and its industrial users are jointly and severally responsible for compliance with the provisions of a joint NPDES permit issued to all of them. In that Decision, EPA also determined that it may include monitoring requirements at both the CWT facility and at individual or joint wastestreams upstream of the CWT facility, and require each industrial user to provide information on production rates for each product and consumption rates for each raw material. The Decision noted that where an industry uses a separate contracting facility to treat its wastes, that treatment choice would not insulate the industry from the requirements of the Act.

The Agency is treating CWT facilities that are indirect dischargers (i.e., those discharging wastewater to a POTW) analogously. These CWT facilities are industrial users of POTWs and are subject to all applicable pretreatment standards and requirements. Accordingly, CWT facilities are subject to the General Pretreatment Regulations, categorical pretreatment standards and local pretreatment standards. (It should also be noted that CWT facilities that accept wastes defined as "hazardous wastes" under 40 CFR Part 261 may be subject to additional requirements under the Resource Conservation and Recovery Act ("RCRA") and implementing EPA regulations.) Industrial users must comply with any categorical standard(s) applicable to the wastes they treat. For example, if the CWT facility handles wastewaters from a contributor subject to the electroplating categorical pretreatment standard, the CWT facility's discharge of these wastewaters would also be subject to this standard. If the contributor were a member of, for instance, the "electroplating of common metals" subcategory, the limited parameters would include, among others, cyanide, lead and cadmium.

The Agency's treatment of indirect discharging CWT facilities derives from the Clean Water Act. In section 307(b), Congress directed EPA to promulgate pretreatment standards "to prevent the discharge of any pollutant through treatment works . . . which are publicly owned, which pollutant interferes with, passes through, or is otherwise incompatible with such works." The categorical pretreatment standards promulgated by EPA apply to the wastewaters generated by certain industrial processes and discharged to a POTW, regardless of whether they are finally discharged from the industrial generator or through some intermediate conduit. In other words, it is not by whom these wastewaters are ultimately discharged to the POTW, but rather their nature and origin that determines the applicability of EPA's categorical standards.

If all the contributors to a CWT facility are covered by a single categorical pretreatment standard, then the CWT facility must meet the limits contained in that standard. Where that standard is production-based, the limit would be derived using a reasonable measure of the production from all the contributors. It is likely, however, that a CWT facility's customers will include members of more than one industrial category covered by categorical standards and/or "non-categorical" industrial users (i.e., those not currently subject to federal categorical pretreatment standards). In such cases, CWT facilities, like all other industrial users that mix process effluent regulated by various categorical standards prior to treatment or mix process effluent regulated by a categorical standard with wastewater that is not subject to those standards prior to treatment, must calculate an adjusted pretreatment standard using the combined wastestream formula (see § 403.6(e)). This ensures that the treatment of combined wastes performed at a CWT facility is equivalent to on-site treatment of the same combined wastes at equivalent integrated industrial facilities. It also protects against dilution as a substitute for treatment of combined wastewater flows. (See 46 FR 9419–9423, January 28, 1981). For a more detailed discussion of how to use the combined wastestream formula, see EPA's Guidance Manual for the Use of Production-Based Categorical Pretreatment Standards and the Combined Wastestream Formula (1985).

Application of the combined wastestream formula requires several steps when a CWT facility accepts wastewater from an industrial contributor regulated by a categorical pretreatment standard expressed only in terms of mass of pollutant per unit of production (i.e., a "production-based" standard). The CWT facility must obtain sufficient production and wastewater flow information to calculate an adjusted concentration or mass standard for each contributor. All applicable limits must be converted to the same terms. The procedure for calculating concentration or mass-per-day limits from production-based standards has been described above in this preamble. (See also EPA's Guidance Manual for the Use of Production-Based Categorical Pretreatment Standards and the Combined Wastestream Formula, mentioned above, which addresses the conversion of production-based standards to equivalent mass-per-day or concentration limits.) The adjusted limit should be used in the combined wastestream formula to calculate the applicable standard for the CWT's discharge. If the industrial user sends only a portion of its waste to the CWT facility, then the CWT facility must calculate the portion of the adjusted standard allocable to the CWT facility. Generally, this should be a flow-proportioned adjustment.

Although the wastewaters accepted by CWT facility for treatment can vary over time, application of the combined wastestream formula will not necessarily mean that these facilities will be required to recalculate the applicable limits on a daily basis. CWT facilities need to know in advance the nature of the wastewaters they are accepting in order to ensure compatibility with their treatment systems. EPA assumes that most CWT facilities will have an established core of customers regularly sending in their wastewaters for treatment, and that therefore, the composition of incoming wastewaters will generally be fairly stable. The Agency invites comments on whether this reflects actual practice. Moreover, EPA does not expect CWT facilities to recalculate their limits every time there is any change in their incoming wastewaters. Rather, only when there are substantial changes in the make-up of wastewaters being accepted for treatment by the CWT facility will the limits need to be recalculated.

Choosing a CWT facility for treatment of its wastewater does not necessarily relieve the industrial user of responsibility for those wastes it generates. NPDES Decision of the General Counsel No. 43 explained the Agency policy that industrial contributors to a privately owned, directly discharging CWT facility may be held jointly and severally liable for the CWT facility's noncompliance with a single permit issued to the CWT facility and its industrial contributors, to the extent that the noncompliance is attributable to wastes from such industrial contributors. Similarly, a plant sending its wastewater to an indirectly discharging CWT may be held responsible for the proper treatment of its wastes. This includes compliance by the CWT facility with pretreatment standards, including categorical pretreatment standards, the prohibitive discharge standards in § 403.5(a) and (b), and local limits developed under § 403.5(c). Normally, EPA and the States will hold the CWT facility itself liable for any violation. However, where this is not adequate, the contributors can be included.

A question has arisen as to whether on-site treatment facilities used for clean-up actions taken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") and discharging to POTWs are CWT facilities for purposes of these regulations. Although these CERCLA treatment facilities may treat industrial wastes that were initially generated by processes currently covered under one or more categorical pretreatment standards, it will in most cases not be possible to identify the wastes' origins. Even where this is possible, it may be difficult to determine relative quantities of categorical and non-categorical wastes. The combined wastestream formula is intended to apply where discrete, identifiable discharges are combined prior to treatment. It does not apply to situations where categorical wastes cannot be identified and quantified. However, where the treated waste is subsequently discharged to a POTW, other pretreatment standards, such as the prohibitive discharge standards in § 403.5 (a) and (b) and any local limits established under § 403.5(c), are applicable. In addition, if discrete wastestreams contributing to the waste can be identified, categorical standards and the combined wastestream formula apply as well.

Under EPA's recent policy entitled "CERCLA Compliance With Other Environmental Statutes," published at 50 FR 47946 (November 20, 1985), requirements of Federal environmental and public health laws other than CERCLA that are "applicable" or "relevant and appropriate" to CERCLA response actions will be attained or exceeded except in certain limited circumstances. Under this policy, "applicable" requirements are those Federal requirements that would be legally applicable to a response action if the action were not undertaken pursuant to CERCLA. As noted above, although it will often be impossible to apply the combined wastestream formula to CERCLA response actions, the prohibitive discharge standards in § 403.5 (a) and (b), and any local limits established under § 403.5(c) would apply to these actions but for the fact that they are undertaken pursuant to that statute. Therefore, these standards are "applicable," and must be attained or exceeded except in the limited situations enumerated in the policy.

b. *Existing rule.* As discussed above, indirectly discharging CWT facilities are "industrial users" under existing regulatory language and definitions. They are, therefore, subject to the General Pretreatment Regulations, categorical pretreatment standards and local pretreatment standards. As with other industrial users, the Agency has applied the combined wastestream formula to determine applicable limits where CWT facilities treat different wastes. Accordingly, the Agency has not issued specific regulatory language imposing separate requirements on these facilities.

c. *Proposed change.* In order to further promote public awareness of EPA's position on the regulation of indirect discharging CWT facilities, the Agency is proposing to add a paragraph (4) to § 403.6(e) of the pretreatment regulations stating that the combined wastestream formula is applicable to CWT facilities when calculating discharge limits for the facility. As discussed above, this proposal does not change existing requirements but merely clarifies their application. Since it is important that a CWT facility be adequately apprised of the wastes it is receiving, EPA is also proposing to add specific regulatory language requiring that industrial contributors provide to the CWT facility information on the nature of their processes (including relevant production and flow rates, where necessary), volume of wastes, pollutant constituents, and any categorical pretreatment standards applicable to the contributor's processes. This information is necessary for the CWT facility to apply the combined wastestream formula, and thus determine effluent limits. The Agency solicits comments on whether other information is necessary for such an analysis and on whether EPA and/or the States should develop a form to standardize the information provided to CWT facilities. (For transported wastes classified as "hazardous" under 40 CFR Part 261, EPA regulations already require the preparation of a "Uniform Hazardous Waste Manifest" identifying the waste, its volume and its destination. However, CWT facilities need additional information (e.g., applicable categorical standards, production information, etc.) in order to comply with applicable pretreatment standards and requirements.) To ensure that industrial contributors to CWT facilities have the same confidentiality protections as other industrial users, EPA is also proposing to add a new paragraph (n)(4) to § 403.12. This new paragraph would require industrial contributors to maintain, and make available to EPA, the State, and the POTW, records of the information they submit to the CWT facility under the new § 403.6(e)(4) being proposed today. Any of this information ultimately submitted to these governmental entities would be covered under § 403.14, which sets forth the applicable confidentiality requirements.

d. *Alternatives.* Over the past several years, a number of alternative regulatory schemes have been suggested for controlling the discharges from CWT facilities. One such alternative is the promulgation of specific categorical standards for CWT facilities. However, it may not be possible to characterize CWT facilities and thus to establish appropriate uniform national limits since the types of wastes to be treated could vary not only from facility to facility, but also from time to time at the same facility. This alternative could also result in years of delay in obtaining treatment of discharges from CWT facilities.

Another alternative is to rely solely on POTW-developed local limits to regulate CWT facilities. This could be done either through local limits applicable to all of the POTW's industrial users, or by establishing limits specifically applicable to CWT facilities contributing to the POTW. Both approaches would provide considerable leeway at the local level to take account of exact waste loading characteristics and POTW treatment capabilities. However, they could also effectively allow industries in categories covered by national pretreatment standards to avoid compliance with categorical

standards simply by sending their wastewaters to a CWT facility. Such an interpretation is inconsistent with the technology-based treatment requirements of the Act.

A third alternative is to control each pollutant discharged by a CWT facility by applying the most stringent numerical limit for the pollutant taken from all the categorical standards applicable to the wastes received by the facility. However, this alternative may be too stringent in certain cases where the applicable limit is determined by a very small volume of wastewater.

EPA solicits comments on these alternatives and invites suggestions for other possible approaches. The Agency also requests additional comments on the following: (1) The types and volumes of wastes received by CWT facilities that discharge to POTWs; (2) the types of contractual arrangements entered into by these facilities and their contributors (e.g., long- or short-term); (3) whether, and if so how often, wastes are accepted from contributors with whom the CWT facility does not have a contractual agreement; (4) the type of information provided by the contributor to the CWT facility; and (5) the extent, type and frequency of monitoring performed by the CWT facility on incoming wastes.

3. Local Limits (40 CFR 403.8(f))

a. *Background.* The pretreatment program is intended to prevent the introduction to POTWs of pollutants that pass through or interfere with the treatment works. One means to achieve this purpose is through categorical pretreatment standards promulgated by EPA under section 307(b) of the Clean Water Act (CWA). These standards are technology-based minimum requirements, each applicable to a different industry category. However, categorical standards are intended to apply to a broad group of dischargers. Because they are not site-specific, and because they only apply to dischargers in selected industrial categories, these standards do not necessarily prevent all problems caused by industrial discharges that might occur at a particular POTW. Therefore, § 403.5(c) requires POTWs to develop additional limits where necessary to ensure that the objectives of the pretreatment program are met. Section 403.5(c)(1) provides that POTWs required to establish local pretreatment programs under § 403.8(a) must develop and enforce specific limits to implement the general prohibitions against pass through and interference in § 403.5(a) and the specific prohibitions listed in § 403.5(b). As stated in the preamble to the 1981 amendments to the General Pretreatment Regulations:

> These limits are developed initially as a prerequisite to POTW pretreatment program approval and are updated thereafter as necessary to reflect changing conditions at the POTW. The limits may be developed on a pollutant or industry basis and may be included in a municipal ordinance which is applied to the affected classes. In addition, or alternatively, the POTW may develop specific limits in the facility and incorporate these limits in the facility's municipally-issued permit or contract. By translating the regulations' general prohibitions into specific limits for Industrial Users, the POTW will ensure that the users are given a clear standard to which they are to conform.

POTWs not required to develop local pretreatment programs must also establish local limits if interference or pass through has occurred at the POTW and is likely to recur (§ 403.5(c)(2)).

The development of local limits involves three basic steps. The POTW must first determine which, if any, of the pollutants contributed to it by its industrial users have a reasonable potential for passing through or interfering with the POTW, contaminating the POTW's sludge, or jeopardizing the health or safety of the POTW's workers. In making this determination, a POTW should take a broad look at the types of pollutants being discharged and not limit itself to pollutants regulated in its NPDES permit, regulated under established sludge criteria, or known to have interfered with plant operations or threatened worker health or safety. Local limits are intended to be preventative as well as reactive. Therefore, the POTW should, for example, consider overall impacts on sludge quality to protect against likely restrictions on sludge use resulting from future standards. Similarly, a POTW should consider State water quality standards, even though these may not yet have been incorporated in the permit. Although the POTW need not set limits on all pollutants that may some day cause pass through or interference, they should consider whether local limits on such pollutants are appropriate.

For each of the pollutants the POTW concludes may be of concern, the POTW must then determine, using the best information available, the maximum loading that can be accepted by the treatment facility without the occurrence of pass through, interference or sludge contamination. A procedure for performing this analysis is provided in the EPA Guidance Manual for POTW Pretreatment Program Development (October 1983). Once maximum allowable headworks loadings are determined for each of the pollutants of concern, the POTW must implement a system of local limits to assure that these loadings will not be exceeded. The POTW may implement its local limits in a variety of ways, such as uniform maximum allowable concentrations applied to all significant industrial dischargers, or maximum mass discharge limits on certain major dischargers. The POTW may select any method **of** control, so long as the selected method is enforceable and accomplishes the required objectives. When setting these limits, the POTW may also consider whether to add a safety factor to the maximum loads determined to be necessary to prevent problems. A safety factor would also allow for future additions of industrial contributors without the need for readjusting the local limits (which may entail a new headworks analysis). EPA strongly encourages POTWs to incorporate such a safety factor and to reserve some capacity for industrial expansion.

There is no single method of setting local limits which is best in all situations. The EPA Guidance Manual for POTW Pretreatment Program Development mentioned above discusses several alternative methods that a POTW might use to allocate the acceptable pollutant load to industrial users. The manual also provides an example of the calculations a typical POTW would use to determine the maximum allowable headworks loadings for a pollutant and to allocate that load to significant industrial users.

After local limits have been set, they must be updated as necessary to reflect changing conditions at the POTW such as increased domestic wastewater flow, changes in the POTW's industrial user population, or adjustments to the POTW's maximum allowable headworks loadings. Minor changes in the amount of sanitary sewage entering the facility may not require an update of the limits. But any changes in wastewater contributions to the POTW that could cause the local limits to be inadequate must result in a new analysis of the pollutant loadings and, if necessary, modification of the local limits.

In accordance with § 403.10(e) of the General Pretreatment Regulations, some States have assumed responsibility for implementing State-wide pretreatment programs in lieu of requiring POTWs to develop individual local programs. In these States, the NPDES permits of POTWs that otherwise would have been required to develop local pretreatment

programs may need to be modified to require the development of local limits as provided in § 403.5(c)(1). POTWs that may have recurring pass through or interference problems are still required to develop local limits in such States under § 403.5(c)(2). Alternatively, the State can perform the required analyses at each of the POTWs that would normally develop such limits and implement the appropriate local limits necessary to assure that the goals of the program are achieved. These limits would then be enforced in the same manner as other pretreatment requirements, in accordance with procedures included in the approved State-run program. Where States assume POTW responsibility for carrying out pretreatment program requirements, the Regional Offices of EPA will monitor all aspects of the State-run pretreatment program, including the development of local limits, to ensure that the requirements of the national pretreatment program are met.

Guidance on the development of local limits is available from several sources. EPA's Guidance Manual for POTW Pretreatment Program Development (October 1983), mentioned above, contains a detailed description, with examples, of the process of developing local limits. The Agency is currently developing additional technical guidance for POTWs to supplement the local limits material now available in that document. The Agency has also developed a computer program that greatly reduces the time required to calculate the maximum allowable headworks loading. The program also calculates industrial user limits under a number of optional allocation methods, using data provided by the POTW. For additional information on this program, contact Robert F. Eagen, Permits Division (EN-336), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9529.

b. *Existing Rule.* As discussed, § 403.5 states when specific local limits must be developed by POTWs. POTWs required under § 403.8 to develop pretreatment programs must develop local limits to implement the general prohibitions against interference and pass-through in § 403.5(a) and the specific prohibitions listed in § 403.5(b). See § 403.5(c)(1).

Section 403.8(f) sets forth the required elements of an approvable POTW pretreatment program. That section requires a POTW seeking pretreatment program approval to demonstrate that it has sufficient legal authority to enforce local limits developed pursuant to § 403.5(c), but does not explicitly make the actual promulgation of such limits (if needed) a prerequisite to local program approval.

c. *Proposed change.* Questions have arisen regarding whether POTWs required to develop pretreatment programs must develop any needed local limits prior to receiving program approval. In the preamble to the 1981 amendments to the General Pretreatment Regulations, EPA stated that "[local] limits are developed initially as a prerequisite to POTW pretreatment program approval." However, the regulations themselves are not explicit on this point. Therefore, the Agency is proposing today a revision to the regulations to clarify that the development of local limits (or a demonstration that they are not necessary) is a prerequisite to POTW pretreatment program approval (and the continuing legal acceptability of a local program). The proposal will add a new paragraph to the local program requirements in § 403.8(f). As a minimum, all POTWs submitting local programs must evaluate the need for local limits, as described above. Where the evaluation indicates that local limits are needed to protect the treatment works against interference, pass through or sludge contamination, the POTW must develop appropriate limits before its program can be approved. A POTW that proposes to rely solely upon the application of the specific prohibitions listed in § 403.5(b) and categorical pretreatment standards in lieu of numerical local limits should demonstrate that: (1) It has determined that the industrial pollutants of concern will not cause problems at the treatment facility, (2) it has adequate resources and procedures for monitoring and enforcing compliance with the prohibitive discharge and categorical standards, and (3) full compliance with the applicable categorical standards will meet the objectives of the pretreatment program.

When a POTW is identified as requiring a pretreatment program, the requirement to develop such local limits as are necessary will be incorporated into its NPDES permit as part of the requirement to develop a program. When the approved program is incorporated into the POTW's permit, a requirement that these local limits be updated as necessary will also be included. Like all other applicable pretreatment requirements, the failure to develop (and update, as needed) necessary local limits will, of course, continue to be subject to enforcement, either by EPA or an approved NPDES State, as a violation of the POTW's permit.

Any POTW whose program has already been approved without the analysis of the impact of the pollutants of concern and adoption of local limits will be required to initiate an analysis as described above and adopt appropriate local limits. This requirement will be incorporated in the POTW's NPDES permit as soon as feasible. POTWs that have previously adopted local limits but have not demonstrated that those limits are based on sound technical analysis, also will be required to demonstrate that the local limits are sufficiently stringent to protect against pass-through, interference and sludge contamination. POTWs which cannot demonstrate that their limits provide adequate protection will be required to revise those limits within a specific time set forth in a permit modification.

4. Combined Wastestream Formula (40 CFR 403.6(e))

a. *Existing rule.* The combined wastestream formula (40 CFR 403.6(e)) is a method for calculating alternative pollutant limits at industrial facilities where regulated process effluent is mixed with other wastewaters (either regulated or non-regulated) prior to treatment. As stated in the preamble to the 1981 amendments to the general pretreatment regulations (46 FR 9419), the formula is of primary importance to large, diversified industrial users with multiple processes:

> These Industrial Users of POTWs frequently have a number of individual processes producing different wastestreams that are not regulated by the same categorical Pretreatment Standard or are not regulated at all. Many of these integrated facilities have combined process sewers and a number have already constructed combined waste treatment plants. In these situations, the Industrial User often prefers to install, or continue to use, a pretreatment system on the combined stream rather than installing separate parallel systems on each individual stream. A combined wastestream formula permits a facility to mix wastestreams prior to treatment by providing it with an alternative effluent limit for this combined discharge.
>
> EPA wishes to minimize the need for separation of wastestreams and for treatment by parallel systems when comparable levels of treatment can be attained in combined treatment plants. Separate treatment of wastes at an integrated plant can be costly, wasteful of energy, inefficient and environmentally counterproductive. In addition, such an approach reduces the environmental gains resulting from the voluntary treatment of unregulated streams prior to the imposition of regulatory requirements. However, the Agency also

recognizes that the countervailing concerns of avoiding the attainment of limits through dilution and ensuring that adequate treatment is provided may sometimes lead to the conclusion that segregation of streams is the only appropriate way to meet applicable pretreatment limits. The combined wastestream formula attempts to strike a proper balance between these considerations. It is the Industrial User's choice whether to combine or segregate its wastestreams. However, if the User decides to combine wastestreams prior to treatment, and at least one of these wastestreams is covered by a categorical pretreatment standard, then alternative limits for all regulated pollutants in the combined wastestream must be calculated using the combined wastestream formula.

b. *Proposed rule.* Where an industrial user combines wastestreams prior to treatment, compliance with an applicable categorical standard can be determined either prior to combining the wastestreams or following treatment of the combined wastestream (by applying the combined wastestream formula). Some industrial users have indicated that they would like to be able to switch between monitoring at these two points for purposes of evaluating compliance with categorical standards. The current regulations are silent on whether this option is allowed.

Today, EPA is proposing to add a new paragraph (e)(5) to the combined wastestream provision in § 403.6 to clarify the approach to be taken in such cases. Under the proposed rule, an industrial user has an initial choice of monitoring either the segregated wastestream(s) or the combined wastestream and then applying the appropriate numerical limits. If, at some later date, the industrial user wishes to change its initial choice of monitoring points, it may do so only after receiving approval from the Control Authority. This is necessary to enable the Control Authority to verify the applicable limits (e.g., alternative limits calculated using the combined wastestream formula) and ensure that the change in sampling points will not allow the industrial user to substitute dilution (either by non-regulated process water or by "dilution flow" as defined in § 403.6(e)) for pretreatment.

EPA is also proposing today to add stormwater and reverse osmosis or demineralizer backwash to the definition of "F_D" in § 403.6(e)(1), which refers to streams that are treated as dilute for purposes of calculating alternative limits under the combined wastestream formula. Like the other streams included in this definition, stormwater and reverse osmosis or demineralizer backwash streams do not generally contain significant concentrations of regulated pollutants. Today's proposal takes this fact into account.

As with boiler blowdown and non-contact cooling water streams, however, in certain circumstances a stormwater stream or reverse osmosis or demineralizer backwash stream could contain a significant amount of a pollutant that could be substantially reduced if the industrial user combined this stream with its regulated process wastestream(s) prior to treatment. Under today's proposal, the industrial user could request the Control Authority to classify the stream as an "unregulated" stream rather than a "dilution" stream. The industrial user would be required to provide engineering, production, and sampling and analysis information sufficient to allow a determination by the Control Authority on how the stream should be classified. The Control Authority would have discretion to classify the stream in question as either a "dilution" or an "unregulated" stream.

EPA is also proposing to revise § 403.6(e)(3). That section describes the self-monitoring required to insure compliance with alternative limits derived using the combined wastestream formula, and references self-monitoring requirements in categorical pretreatment standards. However, the categorical standards do not contain such self-monitoring requirements. The Agency is proposing to delete the existing § 403.6(e)(3) to reflect this fact. In place of the deleted provision, the Agency is proposing a new § 403.6(e)(3) that will require compliance with the monitoring requirements in § 403.12(g), which is also being proposed to be amended today (see discussion below).

c. *Additional clarifications.* Several other questions have recently been raised concerning application of the combined wastestream formula. Since these questions have broad applicability, it is appropriate to address them here. One question is which industrial facilities must use the formula to determine alternative discharge limits. Under the regulations, any industrial user who combines a regulated process wastestream prior to treatment with any other wastestream—be it some other regulated stream, a dilution stream (as defined in the formula) or an unregulated stream (one not covered by a categorical standard and not a dilution stream)—and who chooses to monitor the combined wastestream for compliance must use the combined wastestream formula to determine the applicable discharge limits. If the industrial user chooses instead to monitor the regulated process wastestream separately, the formula does not apply and the user must comply with the limits in the applicable categorical standard immediately downstream from the regulated process (prior to combining with other wastestreams). A detailed discussion of the formula can be found in EPA's Guidance Manual for the Use of Production-Based Categorical Pretreatment Standards and the Combined Wastestream Formula (1985).

A second question concerns the applicability of the combined wastestream formula where wastestreams are combined after treatment (i.e., a treated regulated process wastestream is combined with a non-regulated wastestream prior to being discharged to the POW). The industrial user may choose to monitor the combined wastestream, rather than monitoring the individual regulated streams prior to their combination with other streams. Many of these facilities are covered by local limits which are applicable at the point the discharge enters the sewerage system. By sampling after combining waste streams, the industrial user would only need to sample once to determine compliance with both local limits and categorical standards. Some Control Authorities have required sampling at a single point for this reason.

By its terms, the combined wastestream formula does not apply where wastestreams are combined after treatment because, as stated in § 403.6(e), the formula applies only "[w]here process effluent is mixed *prior to treatment*" with other wastewaters (emphasis added). Where wastestreams are mixed after treatment, the user must meet the categorical standard at the treatment facility, prior to combination. However, EPA recognizes the need for translating the standard into a limit after all streams are combined. To do this, all wastestreams contributing to the combined stream must be properly accounted for to ensure that compliance is not achieved through dilution. In some cases, the combined wastestream formula may be used, even though it is not technically applicable. However, as discussed below, use of the combined wastestream formula will not be appropriate in other cases, because it would allow dilution. In these cases, a different, but similar, calculation must be performed.

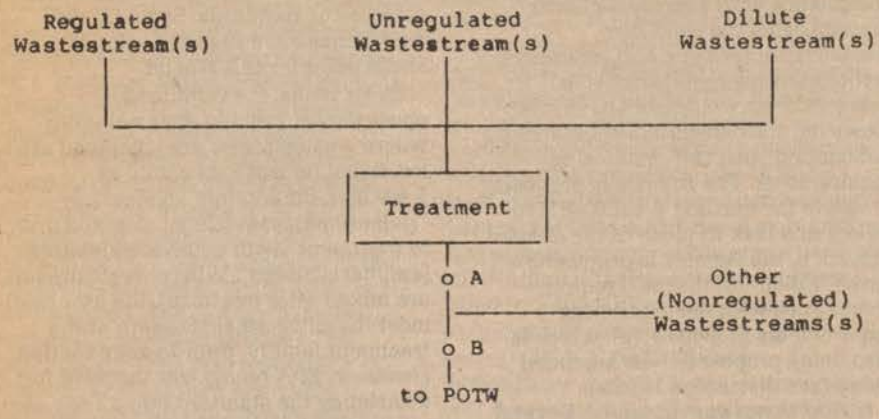
The combined wastestream formula represents a careful compromise of competing concerns. It allows dilution in cases where the actual pollutant concentration in an unregulated stream is less than the categorical standard for the regulted stream. This result is tolerated as a trade-off for the benefit of treating unregulated streams as well as regulated streams. See the discussion in 46 FR 9419–9423 (January 28, 1981). However, where unregulated streams are untreated and combined with regulated streams only after the

regulated streams have been treated, no such trade-off exists to justify the acceptance of dilution in some cases. Thus, consistent with the prohibition against using dilution to achieve compliance with pretreatment standards (see preamble discussion on dilution under § 403.6(d), the use of the combined wastestream after treatment is prohibited where it would allow dilution.

To establish an equivalent alternative limit where monitoring takes place after treated and untreated streams are combined, the Control Authority must use a flow-weighted average or more stringent approach. (Where the combined wastestream formula is available, as discussed above, it will be at least as stringent as a flow-weighted average.) The applicable standard(s) must be adjusted to reflect the actual amount of a particular regulated pollutant in the non-regulated wastestream. If the standard is expressed in terms of mass-per-day, the levels of the regulated pollutant in the individual non-regulated wastestreams are simply added together with the mass limits on the regulated streams to determine the applicable limit on that pollutant in the combined wastestream. For concentration-based standards, a flow-proportioning calculation must be performed in order to properly account for the level of the regulated pollutant in the non-regulated wastestream(s). If the resulting adjusted standard is below the limit of detectability, monitoring of the individual regulated wastestreams for compliance must be performed prior to the point of combination with the non-regulated wastestreams.

Figure 1 illustrates the situation where wastestreams are combined after treatment.

Figure 1



At Point A, the industrial user must comply with an alternative limit calculated using the combined wastestream formula. At Point B, the combined wastestream formula may be used if the nonregulated wastestream(s) being added after treatment contain(s) regulated pollutants in at least the level indicated in the applicable categorical standard(s) (i.e., no dilution occurs). Otherwise, the following formulas must be used:

(1) *Adjusted Concentration Limit* = (Combined Wastestream Formula Concentration Limit for Point A) × (Flow at Point A) + (Actual Mass of Pollutant in Nonregulated Wastestreams Added After Treatment) / (Flow at Point B)

(2) *Adjusted Mass Limit* = (Combined Wastestream Formula Mass Limit for Point A) + (Actual Mass of Pollutant in Nonregulated Wastestreams Added After Treatment)

For example, if the alternative limit calculated under the combined wastestream formula for Point A is 10 milligrams per liter (mg/1), the flow at Point A is 3,000 liters per day (1/day), the mass of the regulated pollutant in the nonregulated wastestream added after treatment is 5,000 mg/day, and the flow at Point B is 5,000 1/day, the adjusted concentration limit applicable at Point B would be calculated as follows:

$$\frac{10\ \text{mg/1} \times 3{,}000\ \text{1/day} + 5{,}000\ \text{mg/day}}{5{,}000\ \text{1/day}} = \frac{35{,}000\ \text{mg/day}}{5{,}000\ \text{1/day}} = 7\ \text{mg/l}$$

Calculating an adjusted mass limit for Point B would be even simpler. If the mass limit calculated under the combined wastestream formula for point A is 10,000 mg/day, the adjusted mass limit at Point B would be calculated as follows:

10,000 mg/day + 5,000 mg/day = 15,000 mg/day

Today's clarification is merely a logical extension of the dilution prohibition in § 403.6(d), and therefore does not necessitate a regulatory change. Categorical standards apply to specific process wastestreams, where these are combined with other wastestreams prior to treatment, the regulations require application of the combined wastestream formula. However, the formula by its terms does not apply where other, nonregulated wastestreams are added after treatment. Therefore, in those cases where compliance monitoring is performed after these additional streams are added, the actual amount of regulated pollutants in any nonregulated wastestreams added after treatment must be accounted for in order to ensure that compliance with applicable standards is not achieved through dilution, as prohibited by § 403.6(d).

The Agency realizes that its position on this issue has not been made clear in the past and, in fact, may have been stated incorrectly to allow use of the combined wastestream formula where dilution would result. This may have resulted in some confusion and misunderstanding on the part of Control Authorities and industrial users. Therefore, those who have in good faith acted on the assumption that the formula is applicable where wastestreams are combined after treatment will be given a reasonable amount of time to make any necessary adjustments. Industrial users subject to limits made more stringent by these changes will have a reasonable amount of time to comply with the new limits. EPA solicits comments on possible implementation problems resulting from today's clarification.

Another question that has arisen with regard to the combined wastestream formula is how to calculate alternative limits when an industrial user is subject to one or more categorical standards expressed only as production-based limits and others expressed only as concentration limits. In these cases, the user and/or Control Authority should translate the terms into a common standard, either mass or concentration (since most POTWs will determine compliance using concentration limits and analysis, the common standard generally will be concentration). These calculations should be done in the same manner mass and concentration limits are normally derived. Thus, where the alternative limits are to be expressed in terms of concentration, the production-

based standard is multiplied by a reasonable measure of the industrial user's long term average daily production rate (e.g., the average daily production rate during the last 12 months) and the product is divided by a reasonable measure of the long-term average daily flow of the regulated process wastestream (e.g., the average daily flow from the regulated process during the last 12 months). (An amendment to § 403.6(c), also being proposed by EPA today, would codify this calculation for those situations where the Control Authority wishes to apply an equivalent concentration limit to an industrial user subject to a production-based categorical standard.) Where the alternative limit is to be expressed in terms of mass, the concentration limit is converted to a mass limit by multiplying the concentration limit by the appropriate flow of the stream to which the concentration limit applies. The relevant formula would then be applied.

5. Prohibition Against Dilution (40 CFR 403.6(d))

a. *Existing Rule.* Section 403.6(d) of the current regulations prohibits the use of dilution as a means of achieving compliance with categorical pretreatment standards in place of adequate treatment. It has been EPA's consistent policy that dilution may not be substituted for treatment of pollutants. The General Pretreatment Regulations promulgated in 1978 clearly stated this policy. The underlying policy of the Clean Water Act is to reduce the amount of pollutants entering the Nation's waters (Section 101.) This policy will not be met if industrial users meet concentration limits by dilution and thereby discharge the same mass of pollutants at a lower concentration. While dilution may in the short term minimize some water quality problems, it does not reduce the mass of pollutants entering the POTW. The prohibition on dilution is supported by the Act's legislative history and subsequent case law. (See the detailed discussion of the prohibition on dilution in the preamble to the 1981 amendments to the General Pretreatment Regulations (46 FR 9419, January 28, 1981)).

b. *Proposed change.* The language of the existing prohibition in § 403.6(d) applies only to the use of dilution to achieve compliance with categorical pretreatment standards. However, the underlying statutory policy of reducing the total mass of pollutants entering waters of the United States is also applicable to other pretreatment standards and requirements, such as more stringent local limits developed under § 403.5(c). To the extent that local limits regulate pollutants that the POTW is not able to effectively treat (i.e., those that pass through the POTW or contaminate the POTW's sludge), dilution is not an acceptable substitute for adequate treatment. Therefore, EPA is proposing to modify the dilution prohibition to clarify that it is not limited to categorical pretreatment standards. This will more clearly track the statutory intent.

Under the proposal, industrial users will be prohibited from diluting to comply with local limits. This prohibition will not affect the POTW's development of such limits and its ability to factor in the dilution impact of the sanitary sewage contribution to the POTW. However, once the POTW determines its local limits in accordance with § 403.5(c), the industrial users may not use dilution to meet those limits.

B. POTW Pretreatment Program Requirements

1. Deadline for Program Approval—Newly Required POTW Pretreatment Programs (40 CFR 403.8(b)

a. *Existing Rule.* Under the current regulations, POTWs required to develop pretreatment programs under § 403.8(a) must request and receive approval of such programs within three years of permit reissuance or modification to require program development, but not later than July 1, 1983 (§ 403.8(b)). Although the regulations recognize that EPA or States may subsequently require other POTWs to develop programs after this date, the existing rules do not specify a deadline for program submittal or approval.

b. *Proposed change.* EPA is today proposing to amend § 403.8(b)) to establish an outside compliance date for program development and submission where the Approval Authority identifies a POTW as needing a pretreatment program after July 1, 1983. EPA proposes to require program submission to the Approval Authority as soon as possible, but no later than one year after the date on which the POTW was notified by the Approval Authority, in writing, of its responsibility to develop a program. While this time period is shorter than the "up to three year" period authorized for POTWs prior to July 1, 1983, experience indicates that one year is reasonable for POTWs newly required to develop programs. Moreover, the existing three-year deadline includes receiving approval of the program; the deadline being proposed today applies only to the submission of an approvable program. Based upon the POTWs that have developed programs, EPA has determined that, in most cases a complete program submission can be developed within 6 to 12 months. Moreover, EPA and the approved pretreatment States have already identified most POTWs that will be required to develop pretreatment programs; those identified in the future will be able to benefit from the work and experience that has taken place since 1978. In addition, EPA has developed and disseminated guidance on program development and in conjunction with the States will provide guidance and assistance to POTWs where needed.

Under the proposal, Approval Authorities will impose program development requirements on POTWs using the same procedures as for programs previously required. When a new POTW is identified as requiring a pretreatment program, the Approval Authority will modify the POTW's NPDES permit as provided under § 403.8(e) (1) and (5) to incorporate a compliance schedule that includes a program submission date, progress reports and such other interim dates as are needed to insure timely program development.

2. POTW Program Requirements—Remedies (40 CFR 403.8(f))

a. *Existing Rule.* POTWs seeking approval of local pretreatment programs must have adequate legal authority to administer the local program. The required minimum legal authorities include the authority to obtain remedies against industrial users that violate pretreatment standards and requirements (§ 403.8(f)(1)(vi)(A)). In addition to having authority to seek injunctive relief, POTWs must be able to impose monetary penalties. The pretreatment regulations do not specify the minimum penalty amounts that POTWs must be able to collect.

POTWs that have legislative power under State law can meet the requirement to obtain monetary penalties by simply passing appropriate legislation (i.e., local ordinances or an equivalent). However, where a POTW does not have the authority to enact ordinances or other local legislation, the regulations require the POTW to enter into contracts with its industrial users. Monetary penalties are to be imposed through the use of liquidated damages clauses. A liquidated damages clause is a contract provision that sets the amount of money to be paid by a party who breaches the contract (i.e., an industrial user who violates a pretreatment standard or requirement).

b. *Proposed changes.* It is a general principle of contract law that damages for a breach of contract should adequately compensate the loss resulting from the breach. Where a contract includes a liquidated damages clause, the amount of money to be paid for a breach of the contract must be reasonably related to the amount the parties anticipate will compensate for the loss. Moreover, the law in some States may bar the imposition of penalties through such clauses.

Under the pretreatment regulations, liquidated damages clauses in contracts between POTWs and their users must provide for damages that compensate for any violation of pretreatment standards. However, it is difficult to determine, in advance of a breach, the extent of damage to a POTW caused by the breach and thus difficult to select an appropriate sum to be included in a liquidated damages clause in a contract between a POTW and an industrial user. Furthermore, Congress clearly intended that a violation of pretreatment standards be deterred by the possibility of substantial penalties that are not necessarily tied to measurable damage caused by the violations. See section 309 of the Act. Since liquidated damages clauses may not contain penalties, contracts do not appear to be an adequate enforcement mechanism.

To require POTWs to have adequate enforcement authority, EPA is proposing to delete that portion of § 403.8(f)(1)(vi)(A) that provides for the use of contracts as a mechanism for assuring compliance with pretreatment standards and requirements. The effect of today's proposal would be to require all POTWs developing POTW pretreatment programs to pass local legislation enabling them to assess civil or criminal penalties against industrial users in violation of pretreatment standards and requirements. POTWs that do not already have authorization to pass such legislation under State law would have to seek such authority prior to program approval. Those POTWs with approved pretreatment programs that depend upon contracts for implementation and enforcement of pretreatment standards and requirements would also be required to obtain the necessary authority from the State to enable them to directly assess civil or criminal penalties against violating industrial users. This authority would have to be obtained within one year of the effective date of this amendment unless the State would be required to enact or amend a statutory provision, in which case the POTW would have two years in which to obtain this authority.

Today's proposal is not likely to have a widespread impact on the national pretreatment program. It appears that a relatively small percentage of industrial users are currently being regulated through contracts with POTWs. However, the Agency invites comments on this approach and suggestions for other approaches, such as retaining the option to use contracts, but requiring the POTW's legal representative (e.g., the City Solicitor) to certify that such contracts, and particularly the liquidated damages provisions, are valid under State law. The certification under this option would also have to state that a reasonable penalty could also be required in the contract.

Today's proposal is not intended to discourage the use of liquidated damages clauses in contracts between POTWs and their industrial users. Where these provisions are currently in use, POTWs should continue to invoke them where a user violates the contract. EPA's intent is to ensure that POTWs required to develop pretreatment programs have adequate authority to impose monetary penalties for all violations of pretreatment standards and requirements, including those that do not cause any measurable damage to the POTW. The proposed change would merely ensure the use of mechanisms that provide adequate enforcement and remedial authorities.

EPA is also proposing another change to the remedies provision of § 403.8(f) today. Section 403.8(f)(1)(vi) speaks in terms of civil or criminal penalties, but does not contain any guidance as to minimum amounts that POTWs must be able to collect. This has created some confusion and inconsistency in setting penalties. As a result, EPA is proposing to require that all POTWs with pretreatment programs have authority to obtain a maximum penalty of at least $300 per day of violation for both civil and criminal penalties. This amount is consistent with EPA's Procedures Manual for Reviewing a POTW Pretreatment Program Submission (1983) and provides a minimally acceptable deterrent effect. The POTW should provide for larger penalties where appropriate (e.g., where the industrial user has a history of violations, etc.). Of course, by stating this minimum amount in the regulations, EPA in no way limits its (or the States') ability to seek larger penalties in appropriate cases. The $300 amount is simply a minimum for purposes of the POTW's authority to assess civil and criminal penalties. It may not be used as a defense in an enforcement action, brought by the POTW, the State, or EPA against an industrial user, in which a larger amount is sought.

In proposing the $300 minimum today, EPA does not mean to imply that this amount will in all cases be sufficient to deter violations or force compliance by recalcitrant industrial users. In some cases, monetary penalties may need to be coupled with termination of sewerage service or other measures in order to achieve compliance. However, the Agency believes it is important to ensure that POTWs developing pretreatment programs have authority to impose sufficient monetary penalties regardless of whatever other measures might also be appropriate in a given case.

EPA solicits comments on this proposal, and also invites suggestions as to other appropriate minimum penalty amounts. the Agency is particularly interested in receiving comments on the alternatives of requiring POTWs to be able to collect at least $1,000 (per day of violation), and using the same penalty amounts that are required for State NPDES programs in 40 CFR 123.27(a)(3)(i), (ii), (i.e., a maximum of $5000 per day of violation for civil penalties, $10,000 for criminal fines).

3. Modification of Approved POTW Pretreatment Programs (40 CFR 403.18)

a. *Existing rules.* A POTW seeking approval of a POTW pretreatment program must submit a program containing the information specified in § 403.9(b). This submission must include a statement by the POTW's legal representative identifying the legal authorities and procedures under which the POTW plans to operate the program. It must also contain a copy of all relevant legal authorities, a description of the POTW's organization with respect to program administration and a description of available resources.

When EPA or the State approves the program, conditions requiring implementation of the program are incorporated into the POTW's permit (see § 403.8(c)). The POTW is then required to operate the program in compliance with applicable regulations, the approved program submission and any other conditions incorporated into the permit. However, changing conditions at the POTW may warrant changes in the operation of the program. These changes in program operation may result in a program that differs from that described in the approved program submission and required to be followed by the permit conditions. Changes that may require program modification

include the addition of new industrial users, new connections with outlying jurisdictions, the establishment of new water quality standards, the use of new treatment techniques or sludge use or disposal methods, changing resource conditions, a desire by the POTW to modify its control mechanism or its inspection and monitoring program, detection of new pollutants in the POTW's influent, and a finding of deficient legal authority. The current regulations, however, contain no specific provisions on when or how POTW pretreatment programs should be modified to reflect such changes.

b. *Proposed change.* EPA is proposing today to add a new § 403.18 establishing procedures and criteria for modification of approved programs. This section largely tracks the program approval process. Under the proposal, either a POTW or the Approval Authority could initiate the program modification process to reflect changing conditions at the POTW. This would ensure that these changing conditions are fully considered by the Approval Authority just as existing conditions are fully considered prior to initial program approval. Moreover, the modification will ensure that the program remains enforceable and that changes do not undermine the effectiveness of the approved program.

To modify its pretreatment program, a POTW would be required to submit to the Approval Authority: (1) A statement explaining why the program modification is being sought, (2) a modified program submission indicating those aspects of the program submitted by the POTW pursuant to § 403.9(b) at the time the POTW initially requested POTW pretreatment program approval that would be affected by the requested program modification (including the legal authorities, program description, or resource commitments), and (3) any other relevant documents the Approval Authority determines to be necessary under the circumstances, including, for example, any supporting technical documents. Where the Approval Authority initiates the modification, it may request the POTW to submit any necessary information, including the items listed above.

Under proposed § 403.18, all program modifications must be approved by the Approval Authority. After the POTW submits a modification request, the Approval Authority reviews the submission to determine whether the program modification is consistent with the local program requirements of § 403.8(f). If the Approval Authority determines that the program modification is substantial, the review and approval must be in accordance with the procedures in § 403.11(b)–(f), including adequate public notice. It would be administratively impossible to use these full procedures for all program modifications. Therefore, today's proposal provides that for all modifications other than those determined by the Approval Authority to be substantial, the Approval Authority is not required to follow these procedures, but may act on the request without notice.

Substantial modifications are those affecting the fundamental operation of the program. Today's proposal lists four examples of substantial modifications: (1) Changes to the POTW's enforcement authorities (e.g., remedies available for violations of pretreatment standards and requirements by industrial users); (2) changes to local limits contained in municipal ordinances; (3) changes to the POTW's control mechanism, as described in § 403.8(f)(1)(iii); and (4) changes to the POTW's method for implementing categorical pretreatment standards (e.g., incorporation by reference, separate promulgation, etc.). The Approval Authority would determine whether other modifications are substantial on a case-by-case basis. Criteria include: (1) Whether the change would have a significant impact on the operation of the program, (2) whether the change would result in an increase in pollutant loadings at the POTW, and (3) whether the change would impose less stringent requirements on industrial users of the POTW. Where the change meets one or more of these criteria, the modification would be considered substantial. EPA solicits comments on these criteria and on what other substantial modifications, if any, should be identified in § 403.18, as well as any other comments on the proposed approach.

The procedures for review by Approval Authorities of substantial modifications under today's proposal (§ 403.11(b)–(f)) are identical to the procedures for approving local programs and provide for public notice and comment on the proposed modification (and an opportunity for a hearing). Significant changes to an approved program, like program approvals, are likely to be of interest to the public and regulated community and should only be acted on after the public has been notified and had an opportunity to comment on the changes. Moreover, public notice and comment enhances the enforceability of any modified or new provisions that are subsequently approved. The program modification procedures proposed today are consistent with EPA regulations governing State NPDES program revisions (40 CFR 123.62). The public notice requirement for substantial modifications is also consistent with the encouragement of public participation, which is a fundamental policy of the Clean Water Act (section 101(e)).

Today's proposal provides that modifications to POTW pretreatment programs become effective upon approval by the Approved Authority. Notice of approval of substantial modifications must be published in the largest daily newspaper within the jurisdiction(s) served by the POTW. Notice of approval of non-substantial program modifications may also be given by such publication, or by a letter from the Approval Authority to the POTW, a copy of which the POTW shall send to its industrial users. This procedure is identical to the equivalent process in the NPDES regulations for State program revisions. As with State program reviews, POTWs must continue to operate their approved program until a modification is approved by the State or EPA.

Under today's proposal, program modifications must be incorporated into the POTW's NPDES permit, since the permit contains conditions based upon the original program. For substantial modifications, the permit must be modified as soon as possible after approval of the modification. Since these modifications will already have been subject to the public notice requirements of § 403.11, a second round of public notice and comment should not be required when the POTW's permit is modified to incorporate the program changes. Therefore, EPA is proposing to amend 40 CFR 122.63(g) of the NPDES regulations (paragraph (g) was added in a final rule recently published by the Agency in the **Federal Register**) to allow the incorporation of substantial POTW pretreatment program modifications into a POTW's NPDES permit to be carried out as a minor permit modification. Alternatively, the Approval Authority may conduct concurrent program and permit modification, thus combining the public notice and comment processes. (Many Approval Authorities have adopted this approach for local program approvals.) For non-substantial program modifications, today's proposal provides that these are to be incorporated into the POTW's permit when it is next reissued or modified for any other reason.

The procedures proposed by EPA today would require all POTW pretreatment program modifications to be approved prior to adoption and

implementation by the POTW. However, the Agency recognizes that some modifications (e.g., minor changes to the POTW's data management system) are so minor that the effort required to review and approve them may outweigh their significance with respect to the operation of the POTW's program as a whole. In light of this, EPA is considering alternatives to the approach being proposed today that would allow the POTW to make certain changes in the operation of its pretreatment program without receiving prior approval from the Approval Authority. First, the Agency could specify in § 403.18 all modifications for which the POTW would not be required to obtain prior approval. This approach would require an exhaustive listing of non-substantial modifications. Another approach would be to specify substantial modifications (as in the proposal) and provide additional criteria (such as those outlined above) for determining when a modification is substantial, and require prior approval only for changes specified as substantial or meeting these criteria. This approach would leave to the POTW the determination of whether a given change (other than one specified as substantial) meets the criteria for being a substantial modification. EPA solicits comments on these alternative approaches. In particular, the Agency requests detailed comments regarding which specific modifications should be identified as not requiring prior approval under the first approach.

C. POTW and State Pretreatment Program Approval

1. POTW Pretreatment Program and Removal Credit Application Submission—Approval Authority Action (40 CFR 403.9(e))

a. *Existing Rule.* A POTW seeking pretreatment program approval must submit to the Approval Authority certain information described in § 403.9(b), including a statement certifying that the POTW has adequate authority to carry out the program, copies of all relevant legal authorities, a description of the POTW's organization for administering the program, and a discussion of resources available for program implementation. POTWs applying for removal credit authority must submit an application containing the information required in § 403.79(e) including a list of pollutants for which removal credits are proposed, data on the POTW's consistent removal of these pollutants, proposed revised limits, a certification that the POTW has an approved pretreatment program, a description of the POTW's sludge use and disposal methods, and a certification that granting removal credits will not cause a violation of the POTW's NPDES permit. The procedures for Approval Authority review and action of these requests are the same. After receiving the applicable submission(s), the Approval Authority is required to make a preliminary determination of whether the submission contains all the items required under § 403.9(b) or, if appropriate, § 403.7(e). If the submission is determined to be complete, the Approval Authority must notify the POTW and initiate the public notice and review procedures set forth in § 403.11. Following public comment, the Approval Authority completes its review of the program submission and issues its final determination. The regulations require the Approval Authority to issue its final decision within 90 days, unless the comment period is extended beyond 30 days, in which case the Approval Authority shall have an additional 90 days to complete its review. However, the existing regulations do not specify how much time the Approval Authority has in which to make its initial completeness determination.

b. *Proposed changes.* PIRT's final report stated that the lack of a deadline for the Approval Authority's completeness determination for POTW Pretreatment Program and removal credit submissions has led to unnecessary delays. To address this perceived problem, PIRT recommended that the Approval Authority should have 60 days from the date of a POTW pretreatment program or removal credit application to determine whether this submission meets the applicable requirements of paragraphs (b) and (d) of § 403.9. Therefore, EPA is proposing to amend § 403.9(e) to add such a 60-day time limit. The proposed time limit, in conjunction with current time periods for final Approval Authority action, should help ensure that local program and removal credit requests are acted on within a maximum of 240 days, assuming the request is complete.

2. Approval of State Pretreatment Programs—State Regulations (40 CFR 403.10(g)(1)(iii))

a. *Existing rule.* The CWA amendments of 1977 required that all State NPDES programs include pretreatment programs. For new State programs, a pretreatment program must be included as part of the NPDES submission. Approved NPDES States were required to request modification to include pretreatment by March 27, 1980 (§ 403.10(a)).

In general, States seeking approval of pretreatment programs must have detailed regulations in place before program approval. However, under § 403.10(g)(1)(iii) EPA may authorize an NPDES State to operate a pretreatment program without implementing regulations in effect if the State has sufficiently detailed statutory authority and has submitted a detailed description of the procedures by which it proposes to implement the program. There is no comparable provision in the NPDES regulations, which require all implementing regulations to be in effect prior to NPDES program approval. See 40 CFR 123.21(a).

EPA adopted § 403.10(g)(1)(iii) in 1980 for several reasons. First, several States suggested that having pretreatment regulations in effect was not essential to ensure implementation of the pretreatment program in NPDES States that had already demonstrated their ability to carry out a complex NPDES permit program on a statewide level. Second, the delay resulting in some cases from the promulgation of regulations was seen as an impediment to substantial environmental benefits that would follow from early approval of State pretreatment programs. Third, some of the authorities necessary for successful implementation of the pretreatment program are part of the NPDES program as well and are encompassed by the State's existing NPDES regulations. For those matters unique to the pretreatment program, EPA believed that a comprehensive statement describing how the State intended to carry out this portion of the program and indicating the State's readiness to promulgate regulations in the future, in concert with detailed statutory authority, would provide sufficient public notice and assurance of the State's authority and intention to carry out the program.

This revision was intended to facilitate State program approval where the State had adequate authorities. Even where States were approved without regulations, it was expected that the State would promulgate pretreatment regulations at a later date. Moreover, EPA recognized that all States would need to revise their NPDES regulations to conform to the May 19, 1980 Final Consolidated Permits Regulations. The addition of § 403.10(g)(1)(iii) allowed States to coordinate those rule changes with promulgation of pretreatment regulations.

b. *Proposed change.* EPA is proposing to delete § 403.10(g)(1)(iii), thus requiring all States to have adequate regulations at the time of program approval. Under

existing regulations, the option of not developing regulations prior to program approval is available only if the State program description fully describes the procedures it intends to use and how it intends to implement each of the required legal authorities in the absence of regulations. This also necessitates a detailed discussion of how each of these required legal authorities can be directly applied and enforced. In addition, the Attorney General's Statement must fully explain the State's legal authority, with special emphasis on the direct applicability and enforceability of the State statute without implementing regulations. Obviously, a State can only meet this burden if the statute is so detailed as to be "self-implementing."

EPA's experience has shown that it is highly unlikely that a State will have sufficiently detailed statutory authority to operate a pretreatment program without implementing regulations. In those States whose programs were approved without regulations in effect, problems have arisen, particularly with regard to enforcement of categorical pretreatment standards against industrial users. One State that has since developed regulations informed EPA that it found it could not enforce its pretreatment program, notwithstanding the commitments in its program description. In its Final Report to the Administrator, PIRT noted these problems and recommended that § 403.10(g)(1)(iii) be deleted. EPA agrees with the Task Force's recommendation. In order to eliminate this problem, the Agency is proposing today to delete the provision. This will make the pretreatment regulations consistent with the NPDES regulations and mean that in the future, States requesting approval of their State pretreatment programs will have to have all necessary implementing regulations in place before their programs can be approved. In addition, those approved States lacking pretreatment regulations will have to promulgate regulations where the absence makes their program deficient under the revised § 403.10.

3. Approval Procedures for POTW Pretreatment Programs and Authority to Grant Removal Credits (40 CFR 403.11(b))

a. *Existing Rule.* Section 403.11 sets out the procedures for approving POTW pretreatment programs and applications for removal credit authority. Upon receipt of a local program submission or removal credit application, the Approval Authority must first determine whether the submission is complete. The elements of a complete submission are set out in § 403.9(b) for POTW program approvals and §§ 403.7(e) and 403.9(d) for removal credits. After determining that a submission is complete, the Approval Authority must provide notice and an opportunity to request a public hearing. Section 403.11(b) requires issuance of the public notice within 5 days after the completeness determination.

b. *Proposed change.* PIRT has recommended changing the 5-day time limit for issuing public notice following a completeness determination to 20 work days. PIRT concluded that 5 days was too short because Approval Authority procedures are often not sufficiently expeditious to meet that limit. EPA agrees with PIRT's recommendation. A longer time period in which to issue public notice and an opportunity to request a hearing appears to be both necessary and appropriate. The 20-day limit recommended by PIRT and proposed by EPA today is more realistic while still conforming to the basic intent of providing prompt public notice of submissions that are under Agency review. Moreover, since elsewhere in this **Federal Register** notice, EPA is proposing a time limit for the Approval Authority to determine whether the submission is complete (see discussion of proposed amendment to § 403.9(e) above), Approval Authorities must act expeditiously at all stages of the review process.

D. Reporting and Compliance Monitoring

1. Baseline Monitoring Report—Deadline for New Sources (40 CFR 403.12(b))

a. *Existing rule.* To establish an effective local pretreatment program, it is essential that the POTW have complete information on the nature and quantity of pollutants contributed by each of its industrial users. Section 403.12(b) requires that all industrial users, including new sources, that are subject to categorical pretreatment standards submit baseline monitoring reports ("BMRs") to the Control Authority. These reports supply basic information to identify each contributing industrial user, the characteristics of the user's discharge and the user's compliance status. Information required to be reported in BMRs includes: a list of environmental control permits held by the industrial user, a description of the user's operations, information on flow and amounts of regulated pollutants discharged to the POTW, and a certification of whether the user is currently in compliance with the applicable categorical standard(s). If the industrial user is not in compliance when the BMR is prepared, the report must also include a compliance schedule showing the shortest time by which compliance will be achieved. The baseline monitoring report does not apply to industrial users not covered by categorical standards. (Elsewhere in this **Federal Register** notice, EPA is proposing to clarify that POTWs must require appropriate reports where the POTW determines that information on these "noncategorical" discharges is necessary. [See discussion of proposed § 403.12(h) below.])

Section 403.12(b) requires industrial users to submit BMRs to the Control Authority within 180 days after the effective date of the applicable categorical standard, or within 180 days after a final decision on a category determination request, whichever is later. However, there is no deadline specified for new sources. Nor does § 403.12(b) contain a deadline for submission of BMRs by directly discharging existing sources that become indirect dischargers subsequent to the promulgation of an applicable categorical pretreatment standard.

b. *Proposed change.* Today's proposal would revise § 403.12(b) to require new sources, and existing sources that become industrial users subsequent to the promulgation of an applicable categorical standard, to submit a baseline monitoring report at least 90 days prior to commencement of the facility's discharge to a POTW. EPA is also proposing to clarify that for new sources, the industrial user shall provide estimates for the information on production, flow and the presence and quantity of regulated pollutants in its wastestream requested in § 403.12(b)(3)–(5).

EPA solicits comments on whether the 90-day pre-discharge BMR deadline is adequate. It should be borne in mind that BMRs are not intended to be the first contact between a new industrial user and the POTW. EPA encourages the earliest possible communication between POTWs and new source industrial users. Early contact can occur in several ways. Many new sources will be constructing new facilities, and will thus be required to obtain a construction permit from the municipality long before they begin to discharge. Even where there is no new construction (e.g., the new source is moving into an existing facility), the new source will need to apply for water and sewer service well in advance of any discharge. The POTW may also learn of potential new industrial users through its inspection of existing industrial users. When contact with a new industrial user is made, the POTW should obtain as much

information as possible regarding the nature of the user's expected discharge and should inform the user of applicable pretreatment standards and requirements, including, to the extent possible at that time, any local limits to which the user will be subject. (Of course, if the user is a member of a trade association (e.g., the National Association of Metal Finishers), it will generally be kept up-to-date on applicable categorical standards.) Therefore, the BMR functions not as a preliminary assessment of the expected pollutant loading from a new source, but rather as a final check prior to commencement of discharge. By the time the BMR is due, the industrial user should already be aware of most, if not all, of its pretreatment responsibilities and will have had an opportunity to start taking whatever actions are necessary to fulfill them.

EPA recognizes that BMRs submitted by new sources under the proposed deadline cannot be complete; for instance, new sources cannot certify whether they will be in compliance with applicable categorical standards since they have not yet commenced discharge. For this reason, the current regulations do not require new sources to include a compliance certification or compliance schedule in their BMRs. Similarly, new sources cannot monitor the flow or pollutant constituents and concentrations of their wastestreams, nor can they provide actual production data. However, an industrial user that is a new source can, and under today's proposal would be required to, provide estimated data on these items. This information will allow the Control Authority to assess the potential impact of the new source on the POTW, the receiving waters into which the POTW discharges and current and alternative sludge use or disposal options. The Control Authority can also use this information to make a preliminary determination of whether additional limits beyond those in the applicable categorical pretreatment standard (i.e., local limits) will be necessary to prevent pass-through and interference at the POTW. In some cases, the POTW may need to set more stringent local limits on other contributors to the system to avoid permit violations. Early submission of this information provides the POTW adequate time to determine whether such steps are needed. Without such estimates, the POTW would only learn too late that local limits were needed to avoid a permit violation. Obviously, it is preferable to avoid such violations.

Within 90 days after discharge has commenced, § 403.12(d) requires the new source to submit actual flow and pollutant data in addition to a compliance certification and, if necessary, a statement of what additional steps are necessary to achieve compliance. The POTW can then reevaluate the impact of the industrial user's discharge using actual data on pollutant loadings and adjust its limits if needed. The approach being proposed today, i.e., requiring estimated data that is later followed up with actual data, is consistent with proposed amendments to the NPDES regulations, which would require directly discharging new sources to use estimated data in preparing their NPDES permit applications (see 49 FR 38815, October 1, 1984).

2. Measurement of Pollutants (40 CFR 403.12(b)(5)(iv))

a. *Existing Rule.* Section 403.12(b)(5)(iv) establishes the frequency with which an industrial user must sample and analyze its wastestream to compile data for its baseline monitoring report. Under the present scheme, an industrial user must take multiple samples of each regulated wastestream, with the frequencies determined by the flow of those streams being sampled. Where the flow of the stream being sampled is less than or equal to 250,000 gallons per day, the industrial user must take three samples within a one-week period. Where the flow of the stream being sampled is greater than 250,000 gallons per day, the industrial users must take six samples within a two-week period. Each of these samples must be analyzed separately and the data submitted on the baseline monitoring report. The purpose of this sampling is to provide information to determine whether the industrial user is in compliance with the applicable categorical pretreatment standard(s).

b. *Proposed change.* EPA is proposing to reduce the baseline sampling requirements for industrial users and set a uniform, minimum sampling requirement applicable to all industrial users. Today's proposal requires that at a minimum, for purposes of compiling data for the baseline report, only one sampling analysis of pollutants is required. This proposal would not alter the required sampling techniques (i.e., 24-hour composite sampling), as provided in § 403.12(b)(5)(iii).

A pretreatment baseline report is comparable to the industry NPDES permit application form for direct dischargers (i.e., form 2C). Both are means of collecting preliminary information about the particular facility and its discharge, and are used as a basis for determining whether additional steps need to be taken to achieve compliance with applicable discharge limits. Only one sampling and analysis of the specific pollutants is required for the NPDES permit application. See 40 CFR 122.21(g)(7). The proposed change to the baseline monitoring report sampling requirement will, therefore, bring it in line with that required by its counterpart in the NPDES program.

Today's proposed amendment would significantly reduce the paperwork burden associated with baseline monitoring reports without significantly impairing EPA's ability to identify and control pollutants. A single sampling analysis is generally adequate to provide Control Authorities with a preliminary picture of an industrial user's processes and wastestream characteristics. However, in more variable industries, more sampling may be necessary to ensure that the Control Authority obtains representative data. The single sampling proposed today is intended to be a minimum. If the Control Authority determines that additional data and sampling are needed to evaluate the impact of the user's discharge or to set local limits, it can, and should, require such analysis. To determine compliance with categorical standards, the Control Authority will use an industrial user's self-monitoring program and compliance reports, in addition to any sampling program conducted by the Control Authority. The reduced sampling for the baseline report will not affect other sampling and analysis requirements.

3. Sampling Techniques (40 CFR 403.12(b)(5)(iii))

a. *Existing rule.* Section 403.12(b)(5)(iii) provides that, where feasible, the samples required in preparing an industrial user's baseline monitoring report must be obtained using "the flow-proportional composite sampling techniques specified in the applicable categorical Pretreatment Standard." Where composite sampling is not feasible, industrial users may take a single grab sample instead of each required composite sample.

b. *Proposed change.* In its Final Report to the Administrator, PIRT pointed out that the categorical pretreatment standards do not specify required sampling techniques. Accordingly, EPA is proposing to revise § 403.12(b)(5)(iii) to correct this error. The proposal would require that, except for five named pollutants, the industrial user must obtain 24-hour composite samples through flow proportioned techniques where feasible.

For five pollutants—pH, cyanide, total phenols, oil and grease, and sulfide—today's proposal would require the use of grab samples. These pollutants are subject to rapid degradation and therefore cannot be accurately sampled through 24-hour composite methods. This proposal would make the sampling requirements of the General Pretreatment Regulations consistent with the NPDES regulations. Those rules require the use of 24-hour composite samples in permit applications, except for seven pollutants for which grab sampling must be used (pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform). 40 CFR 122.21(g)(7). Unlike the NPDES rules, temperature, residual chlorine and fecal coliform are not included on the list of pollutants for which grab samples are required because they are not regulated under categorical pretreatment standards and thus need not be reported on the BMR. EPA is proposing to add sulfide, which is not included in the NPDES provision, since it is regulated under categorical standards and tends to rapidly oxidize and/or gasify.

PIRT also recommended that time-proportional sampling be allowed where flow-proportional automatic sampling is not feasible. In support of its recommendation, the Task Force stated that time-proportioned samples, while not as accurate as flow-proportioned samples, are more representative of an industrial user's daily discharge than the single grab sample currently allowed in the regulation.

In response to PIRT's recommendation, EPA is proposing to change the type of sampling that will be allowed by industrial users where flow-proportional composite sampling is not feasible to allow time-proportioned or grab sampling. Under today's proposal, the industrial user must demonstrate to the Control Authority that the use of an automatic sampler is infeasible and that time-proportional sampling or grab sampling will provide a representative sample of the effluent being discharged. The proposal also would require the Control Authority to make the determination of whether flow-proportional sampling is feasible. Where the Control Authority determines that flow-proportional sampling is infeasible, it would waive the requirements and allow grab or time-proportional sampling.

Consistent with recent revisions to the NPDES regulations (49 FR 38046, September 26, 1984) EPA is also proposing to amend § 403.12(b)(5)(iii) to provide that where grab sampling is used, a minimum of four grab samples must be taken.

4. Annual POTW Reports (40 CFR 403.12(i))

a. *Existing rule.* As a means to oversee the implementation of POTW pretreatment programs, EPA and many approved States usually include in the POTW's NPDES permit a condition requiring that the POTW periodically submit a report describing its program implementation activities during the period covered by the report. These permit conditions, which are inserted at the time the conditions of the approved program are added, generally require the submission of an annual report. These reports are typically required to include an update of the POTW's industrial user population, information on the compliance status of the industrial users, information on the POTW's compliance monitoring and enforcement activities, and information on modifications to the POTW's approved pretreatment program. The majority of POTWs with approved programs have conditions requiring such reports in their NPDES permits. Although these permit conditions are authorized by law (see sections 402(b)(8) and 308 of the CWA) the General Pretreatment Regulations do not contain a specific provision describing the contents of the reports POTWs should submit on the status of their pretreatment program implementation.

b. *Proposed change.* PIRT has recommended that EPA set forth in the general pretreatment regulations the requirement of an annual POTW report for all POTWs with pretreatment programs. This report would be submitted to the Approval Authority and would describe program implementation activities conducted by the POTW during the preceding year. The Task Force stated that such a report is essential to the adequate oversight, by EPA or approved States, of POTW pretreatment programs. By describing the annual report in the regulations, EPA could ensure some degree of uniformity among reports and thus obtain a clearer picture of the status of program implementation on a national scale.

In response to PIRT's recommendation, EPA is proposing to add a new paragraph (i) to § 403.12 requiring each POTW with an approved pretreatment program to submit a report to the Approval Authority at least annually describing program implementation activities. (The submission date will be set in the POTW's NPDES permit.) The report must contain, among other things, an updated list of the POTW's industrial users (or a list of additions and deletions keyed to a previous list) showing the categorical pretreatment standards and/or local limits applicable to each, a summary of the compliance status of each industrial user over the period covered by the report, a summary of compliance monitoring and enforcement activities (including inspections) conducted by the POTW during the reporting period, and any other information requested by the Approval Authority, as appropriate for adequate oversight of the POTW's pretreatment program. This information will provide the Approval Authority with the means to effectively perform its oversight responsibilities with respect to the POTW pretreatment programs within its jurisdiction. By adding the provision to the regulations, all such reports will be required to contain at least the same minimum information, thus providing some consistency. Of course, the Approval Authority may impose such other requirements as may be necessary or appropriate. By expressly providing for adequate oversight in this way, the obligations of EPA, the State, and POTWs with respect to the implementation of the national pretreatment program can be met more effectively.

EPA is currently preparing a guidance document entitled "Pretreatment Compliance Monitoring and Enforcement Guidance," which will contain additional information on these reports. This document will be available in the near future.

5. Signatory requirements for industrial user reports (40 CFR 403.12(k))

a. *Existing rule.* The signatory requirements for industrial user reports in the general pretreatment regulations were patterned after a similar provision in the NPDES regulations. Section 403.12(i)(1) currently states that reports submitted on behalf of a corporation must be signed by a "principal executive officer of at least the level of vice president" or an authorized representative of that person who is responsible for the overall operation of the facility from which the discharge originates. The signatory requirement is intended to ensure that the corporation is legally accountable for the information submitted. The signature on reports or authorization by a principal executive officer provides this accountability.

b. *Proposed change.* In the past two years, EPA has revised the NPDES signatory requirements governing permit application (48 FR 39611, September 1, 1983) and reports from permittees (49 FR

37998, September 26, 1984). These changes were made to reduce the burden of investigating and signing applications and reports for officers of large corporations while continuing to maintain a sufficiently high level of corporate responsibility. This rationale applies equally to industrial user reports in the pretreatment program. Therefore, EPA is proposing to amend the pretreatment signatory provision (§ 403.12(i)) to make it consistent with its NPDES counterpart. (EPA is also proposing to redesignate this paragraph as § 403.12(k) to account for the insertion of new paragraphs (h) and (i) in § 403.12, also being proposed today.)

Today's proposal would change the existing regulations to allow reports to be signed by "a responsible corporate officer," or an authorized representative of that individual. "Responsible corporate officer" includes the president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function. It also incorporates into the regulation EPA's interpretation of "executive officer of the level of vice president" adopted in a previously published policy statement regarding the NPDES permit process (45 FR 52149, August 6, 1980). That statement clarified that an officer performing "policymaking functions" similar to those performed by a corporate vice-president could sign NPDES permit applications submitted by direct dischargers. In addition, the manager of one or more manufacturing, production, or operating facilities of a corporation can now qualify as a "responsible corporate officer" if the facility (or facilities) employs more than 250 persons or has gross national sales or expenditures exceeding $25 million, as long as the manager has been authorized to sign reports in accordance with proper corporate procedures. Formal assignments or delegations of authority are not necessary for corporate officers identified in the proposed provision; it is presumed that these responsible corporate officers have the requisite authority unless the Control Authority has been notified otherwise.

Consistent with the NPDES regulations, the proposal would also allow a "duly authorized representative" of a "responsible corporate officer", to sign reports required under the pretreatment program. This reduces the burden on the regulated community while at the same time providing an equal degree of legal accountability on the part of the "responsible corporate officer." By authorizing a representative to sign reports, the responsible official does not lose legal accountability for the accuracy of the information that is submitted. A "duly authorized representative" may be an individual or position responsible for the overall operation of an industrial user's facility (e.g., a plant manager). It may also be the individual in charge of all environmental matters for the industrial user. The person will, in many cases, have the best knowledge of the company's facility. Since he or she must have overall environmental responsibility within the company, and since their authorization to sign the report must come from a responsible corporate officer, the proposal will also ensure corporate responsibility.

This provision also is proposed to be revised by including the requirement that all reports submitted pursuant to that subsection shall include the oath set forth in § 403.6(a)(2)(ii). This is consistent with the NPDES regulations, which require a similar certification from signatories to NPDES permit applications and reports (see 40 CFR 122.22(d)).

6. Reporting Requirements—Extension to Non-categorical Discharges (40 CFR 403.12(h))

a. *Existing rule.* Section 403.12 describes the reports industrial users subject to categorical pretreatment standards must submit. These reports, individually discussed in more detail elsewhere in this preamble, include baseline monitoring reports (BMRs) required under § 403.12(b), 90-day compliance reports required under § 403.12(d), and periodic compliance reports required under § 403.12(e). The purpose of these reports is to provide the Control Authority with information, together with additional data obtained through the Control Authority's own monitoring program, on the quantity and nature of discharges to the POTW and on the industrial user's compliance with applicable pretreatment standards and requirements.

b. *Proposed change.* The industrial categories for which categorical pretreatment standards have been and are being developed by EPA include those from which significant toxic pollutant discharges occur across the industry nationally. However, individual industrial users that are not covered by categorical standards ("non-categorical" industrial users) have the potential to discharge significant amounts of toxic pollutants to POTWs, resulting in water quality, sludge disposal or other problems. In addition, non-categorical industrial users may discharge other pollutants in quantities sufficient to cause serious interference or pass through problems at the POTW. Although the regulations generally require that such discharges be regulated by the POTW, they do not specifically require non-categorical industrial users to submit reports to the Control Authority regarding their compliance with applicable pretreatment requirements.

The lack of any specific reporting requirements for non-categorical industrial users in the regulations has caused some confusion as to whether Control Authorities are expected to require reporting from these industrial users. Most POTWs currently require some reporting from their non-categorical industrial users as a means to have an effective compliance program; some POTWs even require reports from all of their industrial users.

Although specific reporting requirements are listed only for categorical industrial users, it has never been EPA's intent to exempt non-categorical industrial users from all reporting requirements. One of the regulatory requirements for an approvable POTW pretreatment program is legal authority to require, from all industrial users, such reports as are necessary to assess and assure compliance with applicable pretreatment standards and requirements. See § 403.8(f)(1)(iv). This requirement is explicitly not limited to the specific reports required of categorical industrial users. Adequate information on the quantity and nature of pollutant discharges to the sewer system by all industrial users is essential if the POTW is to effectively regulate its users and prevent violation of pretreatment standards.

Because of the confusion on the reporting required by non-categorical users, EPA is proposing to add a new paragraph (h) to § 403.12 (and redesignating the existing paragraph (h) accordingly) clarifying that the Control Authority must impose appropriate reporting requirements on industrial user discharges that are not regulated by categorical standards. POTWs should use this authority to require sampling for pollutants not regulated by categorical standards where those pollutants may cause passthrough or interference. Of course, the appropriate monitoring and reporting to be required of non-categorical industrial user discharges will vary depending on the circumstances. Factors to be considered include the size of the industrial user, the percentage of the POTW's total flow attributable to the industrial user, the nature of the industrial user's discharge

(e.g., whether the industrial user is discharging pollutants of concern to the POTW), and the industrial user's compliance history. These and other relevant factors should be considered by the Control Authority in establishing appropriate reporting requirements for its non-categorical industrial users. Under the proposal, if the Control Authority determines that reporting by these users is appropriate, the Control Authority would be required to impose some monitoring and reporting requirements.

Industrial users covered by categorical pretreatment standards may also discharge significant amounts of pollutants that are not addressed in those standards. These discharges may be of pollutants in the regulated wastestream that are not limited in the categorical standard, or they may be from other wastestreams to which the standard does not apply. Today's proposal also applies to these discharges from categorical industrial users. Under the proposed provision, the Control Authority must require appropriate reporting concerning all pollutant discharges to the POTW that are not specifically regulated in a categorical standard (and thus are not subject to the other reporting requirements of § 403.12), including those from industrial users that are otherwise subject to categorical standards.

7. Notification of Slug Loadings (40 CFR 403.12(f))

a. *Existing rule.* Section 403.12(f) requires industrial users to immediately notify the POTW to which they are discharging of any slug loading. A slug loading is defined in § 403.5(b)(4) as the discharge of any pollutant at a flow rate and/or pollutant concentration that will cause "interference" (as defined in § 403.3(i)) with the POTW. Section 403.5(b)(4) specifically prohibits slug loadings. The notification requirement is intended to ensure that POTWs are promptly alerted to any loadings to their systems that would cause problems at the treatment plant. The language of § 403.12(f) and its location in a section that deals primarily with reporting requirements for industrial users subject to categorical pretreatment standards has raised questions about whether the slug load notification requirement applies only to categorical industrial users. Despite its location, EPA intended that this requirement apply to any such discharge by industrial users.

b. *Proposed change.* Therefore, EPA is proposing to change the language of § 403.12(f) to clarify that this slug load notification requirement applies to non-categorical, as well as categorical, industrial users.

The Agency is also proposing to expand § 403.12(f) to reference § 403.5(b)(1)–(5) instead of only § 403.5(b)(4). The reason for this change is that there are some slug loadings (e.g., sulfides) that may not cause interference at the POTW (and thus are not prohibited by § 403.5(b)(4)), but are corrosive and hazardous to workers' safety. Referencing § 403.5(b) (1), (2), (3), and (5) in addition to § 403.5(b)(4) in § 403.12(f) will ensure that the POTW will be promptly notified of all dischargers that might cause problems, including interference, at the POTW.

8. 90-day Compliance Report (40 CFR 403.12(d))

a. *Existing rule.* Within 90 days after the compliance date of a categorical pretreatment standard, each existing industrial user subject to the categorical standard must submit to the Control Authority a report indicating whether the user is in compliance with the standard (§ 403.12(d)). New sources must submit this report within 90 days following commencement of discharge into the POTW. The report required by § 403.12(d) must contain information on the nature and concentration of regulated process pollutants in the industrial user's discharge, the average and maximum daily flow of these regulated process wastestreams and a signed statement indicating whether the user is in compliance with the applicable standard(s). If the user is not in compliance, the report must indicate the additional steps that are necessary to achieve compliance. The purpose of this report is to provide information that will allow the Control Authority to determine whether those industrial users subject to categorical pretreatment standards have met the applicable deadlines for compliance with these standards.

(b). *Proposed change.* The information required in 90-day compliance reports is basically the same as that required for baseline monitoring reports (BMRs) (§ 403.12(b)), although the latter report must contain certain additional information. Under both reporting requirements, the industrial user must indicate the nature and concentration of regulated pollutants in the user's discharge, the flow of the user's regulated process wastestreams, whether the user is in compliance with applicable categorical pretreatment standards, and, if not, what steps are necessary to bring the user into compliance. (BMRs must also contain information identifying the industrial users, a list of any environmental permits held by the user, and a brief decription of the user's operations.) Although this same basic information is required in both reports, the regulatory requirements for BMRs (§ 403.12(b)(4)(6)) are much more detailed than those for the 90-day compliance reports in § 403.12(d). To better specify the information to be submitted in 90-day compliance reports, therefore, the Agency is proposing to revise § 403.12(d) to specify the information required in these reports in the same detail as the equivalent BMR provision. The proposed revision does not change the existing requirements, but is merely intended to clarify the contents of the 90-day compliance report.

Elsewhere in this **Federal Register** notice, EPA is proposing to revise the BMR sampling requirements in § 403.12(b)(5) to require a minimum of one sampling analysis (see discussion of proposed amendment to § 403.12(b)(5)(iv) above). This same minimum would apply to 90-day compliance reports. As with BMRs, the Control Authority may require additional sampling and analysis where necessary to obtain representative data sufficient to determine compliance.

EPA is also proposing another amendment to § 403.12(d) today. For those industrial users subject to categorical pretreatment standards expressed only in terms of mass per unit of production, it is imperative that the Control Authority have current production data in order to determine whether compliance with the standard has been attained. Although all industrial users are required to include production data as part of the baseline monitoring report (see § 403.12(b)(3)), this data may be outdated by the time the compliance report required under § 403.12(d) is submitted (usually several years later). Therefore, the Agency is proposing to amend § 403.12(d) to require that these reports also contain the industrial user's current actual average production rate. This will ensure that the Control Authority has up-to-date production data for determining whether the deadlines for compliance with applicable production-based standards have been met.

9. Industrial User Compliance Reports—Monitoring Requirements (40 CFR 403.12(g))

a. *Existing rule.* Under the current General Pretreatment Regulations, industrial users subject to categorical pretreatment standards must submit compliance reports in June and December (or more frequently as

required by the Control Authority). See § 403.12(e). These reports must contain information on the nature and amount of pollutants that are subject to the categorical standard(s) in the industrial user's effluent. The industrial user must also include measured or estimated average and maximum daily flows for the reporting period, or more detailed flow information as required by the Control Authority. Section 403.12(g) provides that these compliance reports must contain the results of sampling and analysis of the industrial user's discharge, but does not specify the amount of sampling and analysis that must be performed for each report. Nor do the categorical standards contain such monitoring frequency requirements. (EPA has recently published a technical amendment deleting from § 403.12(g) the sentence stating that monitoring frequency requirements for industrial users are found in the appropriate categorical standard.)

b. *Proposed change.* Although the pretreatment regulations do not specify the amount of monitoring required for these reports, POTWs may, of course, specify monitoring frequencies in their own sewer use ordinances and individual industrial user permits. Many POTWs have in fact done this. However, the lack of any monitoring frequency requirements, either in the General Pretreatment Regulations or the categorical pretreatment standards, has resulted in some confusion as to the amount of monitoring required for periodic compliance reports under § 403.12(e).

Therefore, to establish an adequate level of monitoring for the periodic compliance report, the Agency is proposing today to raise § 403.12(g) to clarify that the reports required under § 403.12(e) must be based on an appropriate amount of sampling and analysis performed during the period covered by the report. Implicit in § 403.12(e) is that each biannual report contain at least some data for the period covered by the report.

The appropriate monitoring frequency for indirect dischargers will vary from facility to facility, and must be determined by the Control Authority on a case-by-case basis. In making this determination for a particular industrial user, the Control Authority should consider the monitoring frequency considered by EPA in developing, and determining the costs associated with, the applicable categorical standard. This information can be found in the preamble and/or development document accompanying each categorical standard. The Control Authority should also consider such factors as the size of the industrial user's flow and the user's compliance history. Control Authorities may also choose to consider the monitoring frequency that would be imposed on a similar direct discharger in its NPDES permit. Ultimately, the choice is the Control Authority's. EPA would like to clarify that this is not a substantive change to existing requirements. By its lack of specificity, the Agency intended to require that each report be based on an appropriate amount of sampling for the particular industrial user. However, today's proposal should eliminate any confusion.

EPA is proposing two additional changes to § 403.12(g) today. The first is a provision requiring that all monitoring performed by the industrial user be reported in the compliance reports under § 403.12(e). Industrial users, like other dischargers, may monitor more frequently than required by the regulations or the Control Authority. The proposed revision would prevent an industrial user that performs extra sampling from selecting the most favorable monitoring results to report to the Control Authority. Otherwise, dischargers whose sample indicates a violation could perform additional monitoring once compliance is attained and report only the latter results. Clearly, the intent of self-monitoring is that all monitoring be reported. This provision is consistent with § 122.44(i) of the NPDES regulations, which requires that permittees report all monitoring results.

The Agency is also proposing to add a provision stating that if sampling and analysis performed by the industrial user indicates a violation, the user must repeat the sampling and analysis and submit the results of both analyses to the Control Authority within 21 days. This provision would allow the Control Authority to detect patterns of continuing noncompliance by its industrial users, and thus assist in distinguishing isolated violations from chronic noncompliance. EPA invites comments on the scope of this requirement, i.e., whether it should apply to all industrial users or to a limited group of industrial users, such as those subject to categorical pretreatment standards.

10. Self Monitoring vs. POTW Monitoring (40 CFR 403.12(g))

a. *Existing rule.* Industrial users are required to perform certain sampling and analyses for purposes of preparing the various reports described in § 403.12 (the baseline monitoring report, 90-day compliance report, and period compliance reports). See § 403.12(g). The Control Authority is also required to conduct its own independent compliance monitoring program. See § 403.8(f)(2)(v). In addition, States and EPA periodically sample industrial users. These industrial user reports based on the results of self-monitoring are the primary means by which Control and Approval Authorities determine compliance with pretreatment standards. However, compliance sampling by Control and Approval Authorities is used primarily as a periodic check on the industrial user's monitoring and to generate additional data for enforcement.

b. *Proposed change.* PIRT has recommended that § 403.12 be amended to expressly allow POTW monitoring in lieu of self-monitoring by industrial users. According to the Task Force, some POTWs have indicated they would prefer to base their compliance program on sampling and analysis they perform themselves rather than on self-monitoring by industrial users because the reports submitted by some industrial users are not reliable. PIRT also noted that some industrial users would prefer that the POTW conduct the monitoring procedures. The General Pretreatment Regulations are not clear as to whether this is allowed.

In response to PIRT's recommendation, EPA is proposing to amend § 403.12(g) to allow the Control Authority to perform the sampling and analyses required for baseline monitoring reports, 90-day compliance reports and periodic compliance reports in lieu of the industrial user. POTWs choosing to perform their own sampling and analyses for purposes of the reports in § 403.12 must perform at least the same amount of sampling and analysis as is required of industrial users. (Elsewhere in this **Federal Register** notice, EPA is clarifying that the reports required under § 403.12(e) must be based on an appropriate amount of sampling and analysis performed during the period covered by the report [see discussion of other proposed amendments to § 403.12(g) above].)

Where the Control Authority chooses to perform the required sampling and analysis itself, the industrial user would still have to submit any other information required by the applicable paragraph of § 403.12. For example, where the Control Authority is performing the sampling and analyses otherwise required of the industrial user for a BMR, the user would still be required to submit the identifying information, list of environmental permits, production information and

description of operations described in § 403.12(b)(1)–(3). The user would also remain responsible for providing the Control Authority with the compliance certification described in § 403.12(b)(6) and, if necessary, the compliance schedule described in § 403.12(b)(7).

If the Control Authority chooses to monitor in lieu of the industrial users, it is not bound by the July and December reporting frequency for periodic reports in § 403.12(e). Under § 403.12(e), the Control Authority has the discretion to alter the months during which these reports are to be submitted, and thus the months during which it must perform the required sampling and analysis.

EPA solicits comments on this proposal and invites additional suggestions as to how PIRT's recommendation can best be implemented.

11. Notification by Industrial Users of Changed Discharge (40 CFR 403.12(j))

a. *Existing rules.* Under 40 CFR 122.42(b)(2) of the NPDES regulations, POTWs are required to notify their permitting authority of any substantial change in the volume or character of pollutants being introduced into the POTW by its industrial users. Of course, in order to fulfill this requirement, the POTW must obtain the necessary information from its industrial users. However, the current pretreatment regulations do not require an industrial user to notify the POTW of substantial changes in the user's discharge to the POTW. The industrial user compliance reports under § 403.12(e) are required to contain information on the nature and concentration of pollutants in the industrial user's effluent that are regulated under categorical pretreatment standards. However, these reports are not adequate to provide the POTW with the information required by 40 CFR 122.42(b)(2) because: (1) They are not required to contain information on wastestreams not regulated by categorical standards (except for flows of these streams as necessary to allow use of the combined wastestream formula under § 403.6(e)), and (2) they are only required to be submitted biannually (unless the Control Authority requires more frequent submittal).

b. *Proposed change.* EPA is proposing to add a new paragraph (j) to § 403.12 requiring all industrial users to promptly notify the POTW of any substantial change in the volume or character of pollutants in the user's discharge to the POTW. This will ensure that the POTW has the necessary information to meet its obligation under 40 CFR 122.42(b)(2).

E. Miscellaneous

1. New Source Criteria (40 CFR 403.3(k))

a. Existing rule. "New source" is defined for the purpose of the pretreatment program at 40 CFR 403.3(k) of the General Pretreatment Regulations. Under the original definition, a facility was a new source if construction commenced after an applicable categorical pretreatment standard was proposed under section 307(c) of the Clean Water Act as long as the standard was thereafter promulgated within 120 days of the proposal. If the standard was not promulgated within 120 days, the facility was not a new source unless construction commenced after the standard was promulgated. This definition was challenged by the Natural Resources Defense Council on the grounds that the exclusion of those sources whose construction began after the publication of the proposed standard, but prior to promulgation of final rule, was inconsistent with the Act. The United States Court of Appeals for the Third Circuit, in National Association of Metal Finishers (NAMF) et al. v. EPA, 719 F.2d 624 (3d Cir. 1983), agreed, finding the regulatory definition of "new source" to be inconsistent with the definition of that term in section 306(a)(2) of the Act, which does not contain a similar 120-day time limit. The Court remanded the definition to EPA for action in accordance with its decision. On July 10, 1984, the Agency repromulgated the new source definition to comport with the Third Circuit ruling (49 FR 28058). The new definition eliminates the 120-day deadline and basically restates the statutory definition.

b. *Proposed change.* The General Pretreatment Regulations do not, however, address the basis for determining whether construction creates a new source at a site, and thus makes the industrial user subject to pretreatment standards for new sources, or merely modifies an existing source. The NPDES regulations, at 40 CFR 122.29(b), contain specific criteria for new source determinations for direct dischargers. This provision was revised on September 26, 1984 (49 FR 37998). As stipulated in § 122.29(b), construction activities could result in a "new source" if (1) it is construction of a source at a new or "greenfield" site; (2) it is construction at a site of an existing source which totally replaces the process or production equipment causing the discharge at an existing source; or (3) it creates not only a new "building, structure, facility, or installation," but it is "substantially independent" of an existing source at the same site. The new source determination criteria in § 122.29(b) also include factors to be considered in applying the "substantial independence" test, and provide a clarification of when construction is deemed to commence.

It is equally important that Approval and Control Authorities, indirect dischargers and the public be able to determine whether construction at the site of an indirect discharger's existing facility would result in a new source or simply a modification of an existing source. Like direct dischargers, indirect dischargers that are new sources must meet different, and generally more stringent standards than existing sources. Therefore, EPA is today proposing to add new source determination criteria identical to those found in the NPDES regulations to the pretreatment definition of "new source."

As in the NPDES regulations, the proposed changes set out three criteria. Construction by an industrial user would be classified as a new source if: (1) The construction is carried out at a site at which no other source is located, (2) the construction totally replaces the process or production equipment that causes the discharge of pollutants at an existing source, or (3) the production or wastewater generating processes of the constructed facility are substantially independent of an existing source at the same site. The first two criteria deal with situations where it is obviously appropriate to impose the generally more stringent new source standards. The third criterion, the "substantial independence" test is based on the notion that in those situations where there is new construction but less than total replacement at an existing facility, the classification decision should be based on the degree to which the constructed facility functions independently of the existing source. The proposed substantial independence test also sets forth two factors that should be considered in making the determination of whether construction at an existing facility results in processes that are substantially independent and therefore qualify as a new source: (1) The extent to which the new facility is integrated with the existing plant; and (2) the extent to which the new facility is engaged in the same general type of activity as the existing source. Any construction at the site of an existing facility that does not meet the above criteria will not result in a new source.

Today's proposal, like the parallel NPDES provision, also states that construction is deemed to commence when the following are begun as part of

a continuous on-site construction program: (1) Installation or assembly of facilities or equipment, or (2) significant site preparation work necessary for such installation or assembly. Construction is also deemed to commence when the owner or operator of the facility has entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. The proposal also clarifies that options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering and design studies do not constitute such a contractual obligation.

2. New Source Compliance Deadline (40 CFR 403.6(b))

Existing rule. The current regulations state that compliance with categorical pretreatment standards for new sources will be required "upon promulgation." 40 CFR 403.6(b). However, new sources generally will commence discharge after promulgation of a categorical standard applicable to them. For these industrial users, compliance "upon promulgation" is meaningless and essentially requires them to comply with the pretreatment standard for new sources upon commencement of discharge. Interpreting this provision to require immediate compliance by new sources is inconsistent with the NPDES regulations, which instead require compliance by direct dischargers that are new sources "within the shortest feasible time (not to exceed 90 days)," although new sources must "install and have in operating condition, and start-up all pollution control equipment . . . before beginning to discharge." 40 CFR 122.29(d)(4). These NPDES provisions recognize that even after the appropriate technology is installed, dischargers may need a short initial operation period to adjust treatment levels or start up certain treatment systems (e.g., biological treatment).

Proposed change. Today EPA is proposing to insert in § 403.6(b) language identical to that in 40 CFR 122.29(d)(4) with respect to the deadline for compliance by new sources. Under this proposal, new source indirect dischargers, like new source direct dischargers, would be required to install and start-up and necessary pollution control equipment before beginning to discharge. These sources would then be required to achieve compliance with applicable categorical standards within the shortest feasible time, not to exceed 90 days, after commencement of discharge. Today's proposal would ensure that indirect discharges that are new sources have a meaningful compliance deadline consistent with that for direct dischargers.

3. Variance for Fundamentally Different Factors (40 CFR 403.13)

a. *Existing rule.* Under § 403.13, any interested person or EPA may request a fundamentally different factors (FDF) variance from the limits in a categorical pretreatment standard. An FDF variance request must generally be submitted within 180 days after the effective date of the categorical pretreatment standard for which the variance is sought. However, if the industrial user has requested a category determination pursuant to § 403.6(a), the FDF variance request must be made within 30 days after a final decision has been made on the category determination request. The requestor must submit data specific to an industrial user indicating that factors relating to the discharge controlled by the categorical standard are fundamentally different from the factors considered by EPA in establishing the standard. Under current regulations, applications must be submitted to the State Director (in approved States), or the Administrator of EPA or his delegate (in unapproved States). (On April 30, 1986, EPA published a final rule revising § 403.13 to provide that the final decision on an FDF variance request is to be made by the Administrator or his delegate. 51 FR 16028. This authority is currently delegated to the Regional Administrators. See 51 FR 16029.) When the initial application is submitted to the Director, his decision to deny the request is final. However, if the Director finds that fundamentally different factors do exist, he may recommend approval to the Administrator (or his delegate). The Administrator (or his delegate) makes the final decision, subject to any subsequent request for a hearing on the matter (see § 403.13(m)). POTW participation in this process is limited to receiving notice of and an opportunity to review and comment on the application, and being notified of the final decision.

b. *Proposed change.* POTWs with approved pretreatment programs have primary responsibility for controlling discharges to their systems. Accordingly, these POTWs should have more input into whether industrial users discharging into their treatment plants will be granted a variance under § 403.13. POTWs are best positioned to know whether granting a variance in a particular case will cause problems at the POTW. For example, one of the criteria applicable to adjustments making limits less stringent is whether the alternative limits will result in a violation of prohibitive discharge standards under § 403.5, including both the prohibited discharge standards listed in § 403.5 (a) and (b) and local limits established by POTWs under § 403.5(c). See § 403.13(c)(12)(ii). If such a violation would occur, the variance request cannot be approved. POTWs are especially qualified to judge whether the granting of an FDF variance in a particular case is likely to cause interference, pass through, sludge contamination or the violation of local limits. In addition, POTWs are always allowed to impose more stringent limits on industrial users than the Federal regulations (unless otherwise provided under State law). See § 403.4. Where a POTW wants to impose more stringent limits than those resulting from approval of an FDF request, it should be able to prevent a less stringent variance from being granted.

Therefore, EPA is proposing to amend paragraphs (j)(2) and (j)(3) to provide POTWs with a greater role in the FDF process. Under the proposal, if the POTW objects to the request for an FDF variance during the 30-day comment period, the request will automatically be deemed denied. The POTW will provide, in writing, its reasons for objecting to the request. The Director or the Administrator (or his delegate) will notify the requestor (and the industrial user where they are different) of the denial and provide a copy of the reasons given by the POTW. If the requestor wishes to challenge the denial, this must be done in State or local court. If the POTW does not object to the request during the comment period, the Director or the Administrator (or his delegate) will make a determination on the request taking into consideration any comments received. Notice of this final decision will be provided to the requestor (and the industrial user where they are different), the POTW and all persons who submitted comments on the request.

Today's proposal is consistent with the ability of States with approved pretreatment programs to deny FDF variance requests (see § 403.13(k)). Unlike States, however, POTWs would not recommend approval of an FDF variance request, but would only be given the opportunity to deny the request. POTWs cannot reasonably be expected to have the detailed knowledge regarding the basis and scope of national pretreatment standards that is necessary to determine whether fundamentally different factors exist in a given case. Today's proposal recognizes this while still allowing the POTW to impose more stringent limits

where it chooses to do so by preventing the granting of an FDF variance.

Today's proposal will not affect the remainder of § 403.13. As always, the industrial user remains liable for any violations of applicable categorical pretreatment standards until a final decision is made on a pending FDF variance request.

4. Net/Gross Calculations (40 CFR 403.15)

a. *Existing rule.* Section 403.15 allows industrial users to request that EPA adjust an applicable categorical pretreatment standard to reflect credit for pollutants in the intake water. This section was patterned after a similar provision in the NPDES regulations (40 CFR 122.45(f)). It differs from the NPDES provision by providing that only EPA may grant net credits, where the NPDES provision allows approved States to grant credits.

An industrial user may obtain a credit under § 403.15 if it demonstrates that: (1) Its intake water is drawn from the same body of water into which the discharge from its publicly owned treatment works is made, (2) the pollutants present in the intake water will not be entirely removed by the treatment system operated by the industrial user, (3) the pollutants in the intake water do not vary chemically or biologically from the pollutants limited by the applicable standards, and (4) the industrial user does not significantly increase concentrations of pollutants in the intake water, even if the total mass of pollutants remains the same. Net/gross credits are available only to the extent that pollutants are not removed by intake and effluent treatment systems used by the industrial user.

b. *Proposed changes.* EPA recently promulgated a revised net/gross provision for the NPDES program (§ 122.45(g); 49 FR 37998, September 26, 1984). The revised rule was designed to be a less complicated and more workable approach to granting requests by direct dischargers for a limitation on a net basis. A full discussion of the considerations underlying EPA's amendment of the NPDES provision can be found at 49 FR 38025–38028 (September 26, 1984). These same considerations are equally applicable to the pretreatment program. EPA is therefore proposing today to amend the net/gross provision in the General Pretreatment Regulations to make it consistent with the revised NPDES provision.

Today's proposal would provide that upon the request of an industrial user, an applicable categorical pretreatment standard will be adjusted to reflect credit for pollutants in the intake water if the user demonstrates that the control system it proposes or uses to meet the categorical standard would, if properly installed and operated, meet the standard in the absence of pollutants in the intake water. The basic principle is that such a control system must be applied to the discharger's effluent, but that credit is available as necessary to meet applicable limitations after the control system is applied. In addition, under today's proposal, credit for generic pollutants (e.g., BOD, COD, TSS, oil and grease) is not allowed unless the industrial user demonstrates that the constituents of the generic measure in its effluent are substantially similar to the constituents of the generic measure in the intake water, or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere. The purpose of this restriction is to prevent the discharge of wastes that are more toxic than intake water pollutants, but are controlled by a limitation that does not measure this difference in toxicity, such as an oil and grease limit.

Under today's proposal, credit for intake pollutants is only allowed to the extent necessary to meet the applicable categorical standard, up to a maximum value equal to the influent value. Also, the user must generally demonstrate that the intake water is drawn from the same body of water as that into which the POTW discharges. While an industrial user should not be held responsible for pollutants already existing in its water supply if the POTW discharges into the same body of water from which the user takes its water, the same reasoning cannot support allowance of a credit where the POTW's discharge is into another body of water. The grant of a credit in the latter case would allow a discharger to transfer pollutants from one body of water to another, thus resulting in the addition of pollutants to particular receiving waters for the first time. Today's proposal allows the Control Authority to waive this "same body of water" requirement if he finds that no environmental degradation will result. An example might be where intake waters are taken from a relatively clean tributary of a relatively dirty body of water and discharged by the POTW to the latter body, possibly adjacent to where the tributary itself flows into the large body.

Today's proposal also incorporates a PIRT recommendation that Control Authorities be allowed to make net/gross determinations. The Task Force based its recommendation of several factors. First, PIRT pointed out that net/gross determinations for direct dischargers are routinely made by the NPDES permit issuing authority, which is the functional equivalent of the pretreatment Control Authority. Second, PIRT stated that net/gross determinations for indirect dischargers are an activity that can be delegated to POTWs and States implementing the pretreatment program, provided that EPA develops suitable guidance on making such determinations. Finally, PIRT noted that § 403.15 currently provides that net/gross determinations can only be made by the EPA "'Enforcement Division Director," a position that no longer exists at the Regional level. (EPA has recently issued a final rule in the **Federal Register** making technical amendments to the General Pretreatment Regulations, including changing all references to the "Enforcement Division Director" to read "Water Management Division Director" to correctly reflect the Agency's current organization.) EPA agrees with PIRT's recommendation and is therefore proposing to amend § 403.15 to allow net/gross determinations to be made by the Control Authority. The Agency will provide appropriate guidance as needed.

5. Upset (40 CFR 403.16)

a. *Existing rule.* Existing § 403.16 provides an affirmative defense in an enforcement action if the industrial user shows that noncompliance with a categorical pretreatment standard was due to factors beyond the reasonable control of the discharger. This provision in the pretreatment regulations is patterned after that found in the NPDES regulations at 40 CFR 122.41(n) (47 FR 52072).

b. *Proposed change.* EPA revised the upset provision for direct dischargers on September 26, 1984. EPA is today proposing to revise § 403.16 of the pretreatment regulations to make it consistent with the 1984 revisions to the NPDES rule to clarify the showing necessary to prove that an upset has occurred. The existing rule requires a discharger to prove that an upset occurred and that the "the Industrial User can identify the specific causes(s) of the upset . . .". In some cases, overly literal application of this requirement would require a discharger to produce a level of proof that is not scientifically possible to obtain. The proposed deletion of the word "specific" from § 403.16(c)(1) clarifies that the regulation does not require investigation to an impossible degree of certainty. There may be cases where biological activity is disrupted in a treatment system (for example, where no change in raw waste characteristics could be identified) and

where a thorough investigation by the industrial user could not identify the precise cause of the violation. Such evidence could be adduced to show the "cause" required by the regulation, even though the precise cause eluded detection. In these cases, it is sufficient that the available evidence vindicates the industrial user although it does not specifically identify the responsible party or event.

In the context of the upset provision of the NPDES regulations, several persons inquired whether a demonstration of "cause" of an upset can be based upon circumstantial evidence rather than direct evidence. Proof of fact may be made through circumstantial as well as direct evidence. Indeed, circumstantial evidence may be all that is available. However, it is not enough simply to show that normal operating procedures were followed at the time effluent limitation were exceeded. The regulation requires at least a thorough investigation of the causes of an incident. Obviously, a claim of upset will require a stronger showing where previous violations have occurred and no efforts or insufficient efforts were made to identify and remedy the cause or causes.

6. Bypass (40 CFR 403.17)

a. *Existing rule.* For direct dischargers, the NPDES regulations prohibit bypass, which is defined as the intentional diversion of waste streams from any portion of a discharger's treatment facility except in certain situations. This provision thus requires NPDES permittees to operate their entire treatment facility at all times. There are, however, exceptions to the strict prohibition on bypass even where effluent limitations may be violated as a result. Bypass may be excused if the bypass was unavoidable to prevent loss of life, personal injury or severe property damage, and where there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. The "no feasible alternatives" criterion is not satisfied if, in the exercise of reasonable engineering judgment, the permittee should have installed adequate back-up equipment as preventative maintenance or to prevent a bypass that occurred during normal periods of equipment downtime.

The prohibition of bypass in the NPDES regulations applies even where the permittee does not violate permit limitations during the bypass. However, permittees may bypass if they do not exceed effluent limitations and if the bypass was for essential maintenance to assure efficient facility operations.

The NPDES bypass provision serves two basic purposes. First, it excuses certain unavoidable or justifiable violations of permit effluent limitations, provided the permittee can meet the bypass criteria. Second, it requires that permittees operate pollution control equipment at all times, thus obtaining maximum pollutant reductions consistent with technology-based requirements mandated by section 301 of the Clean Water Act. Thus, the bypass provision furthers the Act's goal of eliminating the discharge of all pollutants. Section 101(a)(1) of the Act. Without such a provision, dischargers could avoid appropriate technology-based control requirements.

b. *Proposed change.* EPA today is proposing to add a bypass provision to the general pretreatment regulations similar to that in the NPDES program. The purposes served by the NPDES bypass provision are equally important in the pretreatment context, and, therefore, the prohibition against bypass should also apply to industrial users discharging to POTWs. Like the NPDES provision, today's proposal would require industrial users to operate their treatment systems at all times.

Today's proposal, like the parallel NPDES provision, generally prohibits bypass, even where the discharger would still comply with applicable categorical standards and local limits. However, the proposal would allow an industrial user to bypass where the bypass does not cause a violation of any applicable pretreatment standards or requirements, if it is made for essential maintenance purposes to assure efficient operation of treatment equipment. EPA's rationale for prohibiting bypass even where no violation of applicable limitations would result is stated in the preamble to the September 26, 1984, NPDES rule-making (49 FR 38036–38037):

> EPA's effluent limitations guidelines and standards-setting process are predicted [sic] upon the efficient operation and maintenance of removal systems. A number of the effluent limitations guidelines and standards upon which NPDES permits are based do not contain specific limitations for all of the pollutants of concern for the given industry.
>
> * * * * *
>
> The data available to EPA show that effective control of these [unregulated] pollutants can be obtained by controlling the discharge of the pollutants regulated by the standard . . . to levels achievable by the model treatment technology upon which the effluent guideline limits are based.
>
> * * * * *

If bypass of treatment equipment is allowed, there is no assurance that these unlimited pollutants will be controlled, even though those specifically limited still meet permit limitations.

Consistent with the parallel NPDES provision, today's proposal also would not prohibit bypasses that violate applicable limitations when they are unavoidable to prevent loss of life, personal injury, or severe property damage, and there are no feasible alternatives to bypassing, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. As with the NPDES rule, this "no feasible alternatives" condition is not met if, in the exercise of reasonable engineering judgment, adequate back-up equipment should have been installed to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance. Proper engineering practices often involve the use of redundant or back-up systems for equipment such as pumps or power supplies. Such practices can eliminate any noncompliance during periods of equipment malfunction or maintenance. Under the proposal, the Control Authority will take into account whether back-up equipment should have been available in a given case.

EPA is also proposing to establish a notice requirement for situations where a bypass by an industrial user results in the violation of applicable pretreatment standards or requirements (including local limits established in accordance with § 403.5(c)). If the industrial user knows in advance of the need for a bypass, it must give prior notice to the Control Authority, if possible at least ten days before the date on which the bypass is to occur. If the bypass is not anticipated, the industrial user must notify the Control Authority orally within 24 hours of becoming aware of the bypass. This 24-hour notice must be followed within five days by a written description of the bypass, its cause, its duration (or, if it has not been corrected, how long it is expected to continue), and what has been done to rectify the problem. Consistent with the NPDES bypass provision, the Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

III. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments generally

clarify the meaning of pretreatment requirements and do not impose significant new burdens on affected parties. They do not satisfy any of the criteria specified in section 1(b) of the Executive Order. Therefore, this is not a Major rulemaking.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB and EPA and any EPA response to those comments are available for public inspection at the EPA Public Information Reference Unit, Room 2402, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

IV. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Information Collection Request documents (ICR Nos. 0088, 0822, 1291) have been prepared by EPA and copies may be obtained from: Nanette Liepman; Information Policy Branch; EPA; 401 M St., SW. (PM-223); Washington, DC 20460 or by calling 202-382-2742. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW.; Washington, DC 20503; Attention: Richard Otis. The final rule will respond to OMB or public comments on the information collection requirements.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's proposed amendments to the regulations clarify the meaning of several pretreatment requirements and do not impose any significant new burdens on affected parties. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments will not have a significant impact on a substantial number of small entities.

VI. Judicial Review of Provisions Not Amended

In the regulatory section of this notice, EPA has, for the sake of clarity, sometimes reprinted portions of regulatory text that would not be amended by today's proposal. Those portions of the June 26, 1978 regulations and the January 28, 1981 regulatory amendments that are not substantively amended in today's **Federal Register** were only subject to judicial review in those petitions for review that were filed within 90 days of the date of issuance of the June 26, 1978 regulations, and the January 28, 1981 amendments thereto, respectively. Moreover, EPA does not solicit comments on regulatory provisions for which no amendments are proposed.

VII. EPA Documents Cited in This Notice

The following EPA documents are referenced in the preamble section of this notice:

Guidance Manual for the Use of Production Based Categorical Pretreatment Standards and the Combined Wastestream Formula (1985).

Guidance Manual for POTW Pretreatment Program Development (1983).

Procedures Manual for Reviewing POTW Pretreatment Program Submission (1983).

Pretreatment Implementation Review Task Force—Final Report to the Administrator (1985).

Pretreatment Compliance Monitoring and Enforcement Guidance to be available in the near future.)

Copies of these documents can be obtained by contacting Hans I.E. Bjornson, Permits Division (EN-336), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9530.

List of Subjects in 40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 27, 1986.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is proposed to be revised as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

1. The authority citation for Part 403 continues to read as follows:

Authority: Sec. 54(C)(2) of the Clean Water Act of 1977 (Pub. L. 95-217), Sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500), as amended by the Clean Water Act of 1977.

2. Section 403.3 is proposed to be amended by revising paragraph (k) to read as follows:

§ 403.3 Definitions.

* * * * *

(k)(1) The term "New Source" means any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, *provided that:*

(i) The building, structure, facility or installation is constructed at a site at which no other source is located; or

(ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (k)(1) (ii) or (iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous onsite construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or

contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

* * * * *

3. Section 403.6 is proposed to be amended by revising paragraph (b), redesignating paragraph (c) as paragraph (c)(1), adding new paragraphs (c)(2), (c)(3), (c)(4), (c)(5), (c)(6) and (c)(7), revising paragraph (d), revising the definition of "F_D" in paragaphs (e)(1)(i) and (ii), revising paragaph (e)(3), and adding paragraphs (e)(4), and (e)(5) to read as follows:

§403.6 National Pretreatment Standards: Categorical Standards.

* * * * *

(b) *Deadline for Compliance With Categorical Standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N. Direct dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set forth in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(k). New Sources shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), the New Source must meet all applicable Pretreatment Standards.

(c)(1) * * *

(2) When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

(3) A Control Authority calculating equivalent mass-per-day limitations under paragraph (c)(2) of this section shall calculate such limitations by multiplying the limits in the Standard by the Industrial User's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the Industrial User's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

(4) A Control Authority calculating equivalent concentration limitations under paragraph (c)(2) of this section shall calculate such limitations by dividing the mass limitations derived under paragraph (c)(3) of this section by the average daily flow rate of the Industrial User's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during a representative year.

(5) Equivalent limitations calculated in accordance with paragraphs (c)(3) and (c)(4) of this section shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this Part. Industrial Users will be required to comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(6) Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both types of equivalent limitations.

(7) The Industrial User shall immediately notify the Control Authority of any significant change in the production or flow rates described in paragraphs (c)(3) and (c)(4) of this section. The Control Authority shall then adjust the applicable equivalent limitation(s) to account for such change.

(d) *Dilution Prohibited as Substitute for Treatment.* Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority (as defined in § 403.12(a)) may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

(e) * * *

(1) * * *

(i) and (ii) * * *

F_D=the average daily flow (at least a 30-day average) from (a) boiler blowdown streams, non-contact cooling streams, stormwater streams, and reverse osmosis or demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination, or (b) sanitary wastestreams where such streams are not regulated by a categorical Pretreatment Standard, or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC v. Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons (see Appendix D):

(1) the pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));

(2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) the wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

* * * * *

(3) *Self-monitoring.* Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of § 403.12(g).

(4) *Centralized Waste Treatment.* An alternative pretreatment limit shall be derived by the combined wastestream formula and applied to the Discharge of a privately owned centralized waste treatment facility where such facility receives wastes from one or more industrial contributors whose process wastewaters are regulated by one or more categorical Pretreatment Standards and combines such

wastewater(s) prior to treatment. Each industrial contributor shall inform the centralized waste treatement facility, prior to conveyance of its waste(s) to such facility, of the nature of its processes (including relevant production and flow rates, where applicable), the volume and pollutant constituents of the waste(s), and any categorical Standard(s) applicable to such waste(s). An industrial contributor remains responsible for compliance by the centralized waste treatment facility with applicable Pretreatment Standards.

(5) *Choice of monitoring location.* Where a treated process wastestream is combined prior to treatment of wastewaters other than those generated by the regulated process, the Industrial User may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable Pretreatment Standards. If the Industrial User chooses to monitor the segregated process wastestream, it shall apply the applicable categorical Pretreatment Standard. If the User chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The Industrial User may change monitoring points only after receiving approval from the Control Authority. The Control Authority shall ensure that any change in an Industrial User's monitoring point(s) will not allow the User to substitute dilution for adequate treatment to achieve compliance with applicable Standards.

4. Section 403.8 is proposed to be amended by revising paragraphs (b) and (f)(1)(vi)(A), and adding a new paragraph (f)(4) to read as follows:

§ 403.8 POTW pretreatment programs: Development by POTW.

* * * * *

(b) *Deadline for Program Approval.* A POTW which meets the criteria of paragraph (a) of this section must receive approval of a POTW Pretreatment Program no later than 3 years after the reissuance or modification of its existing NPDES permit but in no case later than July 1, 1983. POTWs whose NPDES permits are modified under section 301(h) of the Act shall have a Pretreatment Program within less than 3 years as provided for in 40 CFR Part 125, Subpart G (44 FR 34783 (1979)). POTWs identified after July 1, 1983 as being required to develop a POTW Pretreatment Program under paragraph (a) of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Approval Authority of such identification. The POTW Pretreatment Program shall meet the criteria set forth in paragraph (f) of this section and shall be administered by the POTW to ensure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

* * * * *

(f) * * *

(1) * * *

(vi)(A) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to assess civil or criminal penalties in at least the amount of $300 a day for each violation by Industrial Users of Pretreatment Standards and Requirements. POTWs whose approved Pretreatment Programs require modification to conform to the requirements of this paragraph shall submit a request for approval of a program modification in accordance with § 403.18 by [one year from effective date of amendment] unless the State would be required to enact or amend a statutory provision, in which case the POTW shall submit such a request by [two years from effective date of amendment].

* * * * *

(4) *Local limits.* The POTW shall develop local limits as required in § 403.5(c)(1).

5. Section 403.9 is proposed to be amended by revising paragraph (e) to read as follows:

§ 403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: submission for approval.

* * * * *

(e) *Approval authority action.* Any POTW requesting POTW Pretreatment Program approval shall submit to the Approval Authority three copies of the Submission described in paragraph (b), and if appropriate, (d) of this section. Within 60 days after receiving the Submission, the Approval Authority shall make a preliminary determination of whether the Submission meets the requirements of paragraph (b) and, if appropriate, (d) of this section. If the Submission is determined to meet these requirements, the Approval Authority shall:

(1) Notify the POTW that the Submission has been received and is under review; and

(2) Commence the public notice and evaluation activities set forth in § 403.11.

* * * * *

§ 403.10 [Amended]

6. Section 403.10 is proposed to be amended by removing paragraph (g)(1)(iii).

7. Section 403. 11 is proposed to be amended by revising the introductory text of paragraph (b) to read as follows:

§ 403.11 Approval procedures for POTW pretreatment programs and POTW granting of removal credits.

* * * * *

(b) *Public notice and opportunity for hearing.* Upon receipt of a Submission the Approval Authority shall commence its review. Within 20 work days after making a determination that a Submission meets the requirements of § 403.9(b), and, where removal allowance approval is sought, §§ 403.7(d) and 403.9(d), or at such later time under § 403.7(c) that the Approval Authority elects to review the removal allowance Submission, the Approval Authority shall:

* * * * *

8. Section 403.12 is proposed to be amended by revising the introductory text of paragraph (b), revising paragraphs (b)(5)(iii), (b)(5)(iv), (d), (f), and (g), redesignating paragraphs (h) through (l) as (k) through (o), revising newly designated paragraph (l), adding (o)(4) to newly designated paragraph (o), and by adding new paragraphs (e)(3), (h), (i), and (j) to read as follows:

§ 403.12 Reporting requirements for POTWs and industrial users.

* * * * *

(b) *Reporting requirements for industrial users upon effective date of categorical pretreatment standard—baseline report.* Within 180 days after the effective date a categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under § 403.6(a)(4), whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraph (b) (1)–(7) of this section. Where reports containing this information already have been submitted to the Director or Regional Administrator in compliance with the requirement of 40 CFR 128.140(b) (1977), the Industrial User will not be required to submit this information again. At

least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b) (1)–(5) of this section. New Sources may give estimates of the information requested in paragraphs (b) (4) and (5) of this section:

* * * * *

(5) * * *

(iii) Grab samples must be used for pH, cyanide, total phenols, oil and grease, and sulfide. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control Authority may waive flow-proportional composite sampling for any Industrial User that demonstrates that the use of an automatic sampler is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged.

(iv) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

* * * * *

(d) *Report on compliance with categorical pretreatment standard deadline.* Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in paragraphs (b) (4)–(6) of this section. This report shall also contain the Industrial User's current actual average production rate.

(e) * * *

(3) For Industrial Users subject to categorical Pretreatment Standards expressed only in terms of mass per unit of production, the reports required by this section shall include the User's actual average production rate for the reporting period.

(f) *Notice of slug loading.* All Industrial Users shall notify the POTW immediately of any slug loading, as defined by § 403.5(b) (1)–(5), by the Industrial User.

(g) *Monitoring and analysis to demonstrate continued compliance.* The report required in paragraphs (b), (d), and (e) of this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. The frequency of monitoring shall be prescribed in the applicable Pretreatment Standard. This sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. These reports shall also contain the results of all sampling and analysis performed by the Industrial User during the period covered by the report. If sampling and analysis performed by the Industrial User indicates a violation, the User shall repeat the sampling and analysis and submit the results of both analyses to the Control Authority within 21 days. The reports required in paragraph (e) shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Control Authority may require whatever frequency of monitoring it deems necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements. All analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(h) of the Act and contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by the Administrator. (See §§ 136.4 and 136.5.) Sampling shall be performed in accordance with the techniques approved by the administrator. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(h) *Reporting requirements for Industrial Users with discharges not subject to categorical Pretreatment Standards.* The Control Authority shall require appropriate reporting from those Industrial Users with discharges that are not subject to categorical Pretreatment Standards.

(i) *Annual POTW reports.* POTWs with approved Pretreatment Programs shall provide the Approval Authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and shall include, at a minimum, the following:

(1) An updated list of the POTW's Industrial Users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to categorical Pretreatment Standards and specify which Standards are applicable to each such Industrial User. The list shall also indicate which Industrial Users are subject to local Standards that are more stringent than the categorical Pretreatment Standards. The POTW shall also list the Industrial Users that are subject only to local Standards.

(2) A summary of the compliance status of each Industrial User over the reporting period;

(3) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; and

(4) Any other relevant information requested by the Approval Authority.

(j) *Notification of changed Discharge.* All Industrial Users shall promptly notify the POTW of any substantial change in the volume or character of pollutants in their discharge.

* * * * *

(l) *Signatory requirements for industrial user reports.* The reports required by subsections (b), (d), and (e) of this section shall include the certification statement as set forth in § 403.6(a)(ii), and shall be signed as follows:

(1) By a responsible corporate officer, if the Industrial User submitting the reports required by paragraph (b), (d) and (e) of this section is a corporation. For the purpose of this paragraph, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25

million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) By a general partner or proprietor if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a partnership or sole proprietorship respectively.

(3) By a duly authorized representative of the individual designated in paragraph (e)(1), or (e)(2) of this section if:

(i) The authorization is made in writing by the individual described in paragraph (l)(1) and (l)(2);

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manger or a position of equivalent responsibility, or having overall responsibility for environmental matters for the Industrial User; and

(iii) The written authorization is submitted to the Control Authority.

* * * * *

(o) * * *

(4) Any industrial contributor to a privately owned centralized waste treatment facility that discharges to a POTW shall maintain records of all information provided to the centralized waste treatment facility pursuant to § 403.6(e)(4), including any results of monitoring activities carried out for the purpose of complying with that section. Records of monitoring data shall include the information listed in paragraph (l)(1) of this section. The industrial contributor shall retain the records described in this paragraph for a minumum of 3 years and shall make such records available for inspection and copying by the POTW, the Director, and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial contributor or the centralized waste treatment facility, or when requested by the POTW, the Director, or the Regional Administrator.

9. Section 403.13 is proposed to be amended by revising paragraphs (j)(2) and (j)(3) to read as follows:

§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

* * * * *

(j) * * *

(2) The public notice shall provide for a period of not less than 30 days following the date of the public notice during which time interested persons may review the request and submit their written views on the request. If the POTW into which the Industrial User discharges objects to the request during the comment period, the request shall automatically be deemed denied. The POTW shall provide, in writing, its reasons for objecting to the request. The Director or Administrator (or his delegate) shall notify the requestor (and the Industrial User where they are not the same) of the denial and provide a copy of the reasons given by the POTW therefor.

(3) Following the comment period, and provided that the POTW into which the Industrial User discharges has not objected to the request, the Director or Administrator (or his delegate) will make a determination on the request taking into consideration any comments received. Notice of this final decision shall be provided to the requestor (and the Industrial User where they are not the same), the POTW into which the Industrial User discharges and all persons who submitted comments on the request.

* * * * *

10. Section 403.15 is proposed to be revised to read as follows:

§ 403.15 Net/Gross calculation.

Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section:

(a) *Application.* Any Industrial User wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the intake water, if the requirements of paragraph (b) of this section are met.

(b) *Criteria.* (1) The Industrial User must demonstrate that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standards(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this section.

(4) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if he finds that no environmental degradation will result.

11. Section 403.16 is proposed to be amended by revising paragraph (c)(1) to read as follows:

§ 403.16 Upset povision.

* * * * *

(c) * * *

(1) An Upset occurred and the Industrial User can identify the cause(s) of the Upset;

* * * * *

12. Part 403 of Title 40 of the Code of Federal Regulations is proposed to be amended by adding a new § 403.17 to read as follows:

§ 403.17 Bypass.

(a) *Definitions.* (1) "Bypass" means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absense of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) *Bypass not violating applicable Pretreatment Standards or Requirements.* An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (c) and (d) of this section.

(c) *Notice.* (1) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.

(2) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Control Authority within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within 5 days of the time

the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(d) *Prohibition of bypass.* (1) Bypass is prohibited, and the Control Authority may take enforcement action against an Industrial User for a bypass, unless:

(i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(iii) The Industrial User submitted notices as required under paragraph (c) of this section.

(2) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in paragraph (d)(1) of this section.

13. Part 403 of Title 40 of the Code of Federal Regulations is proposed to be amended by adding a new § 403.18 to read as follows:

§ 403.18 Modification of POTW Pretreatment Programs.

(a) *General.* Either the Approval Authority or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW Pretreatment Program that differs from the information in the POTW's Submission, as approved under § 403.11.

(b) *Procedures.* POTW Pretreatment Program modifications shall be accomplished as follows:

(1) The POTW shall submit to the Approval Authority a statement of the basis for the desired modification, a modified program description (see § 403.9(b)), and any other documents as the Approval Authority determines to be necessary under the circumstances.

(2) The Approval Authority shall approve or disapprove all modifications based on the requirements of § 403.8(f). For substantial modifications, the Approval Authority shall follow the procedures in § 403.11 (b)–(f).

(3) Modifications shall be incorporated into the POTW's NPDES permit after approval. For substantial modifications, the permit will be modified to incorporate the approved modification as soon as possible as provided in 40 CFR 122.63(f). For all other modifications, the permit will be modified to incorporate the approved modification the next time the permit is reissued or modified for any other reason.

(4) POTW Pretreatment Program modifications shall become effective upon the approval of the Approval Authority. Notice of approval of substantial modifications shall be published in the same newspaper as the notice of the original request for approval of the modification under § 403.11(b)(1)(i)(B). Notice of approval of non-substantial modifications may also be given by such publication, or by a letter from the Approval Authority to the POTW, a copy of which the POTW shall also send to its Industrial Users.

(c) *Substantial modifications.* (1) Substantial modifications include, but are not limited to, the following:

(i) Changes to the POTW's enforcement authorities (e.g., remedies available for violations of Pretreatment Standards and Requirements by Industrial Users);

(ii) Changes to local limits contained in municipal ordinances;

(iii) Changes to the POTW's control mechanism, as described in § 403.8(f)(1)(iii); and

(iv) Changes to the POTW's method for implementing categorical Pretreatment Standards (e.g., incorporation by reference, separate promulgation, etc.).

(2) The Approval Authority will determine, on a case-by-case basis, whether other modifications are substantial. The criteria to be applied in making such determinations include:

(i) Whether the modification would have a significant impact on the operation of the POTW's Pretreatment Program;

(ii) Whether the modification would result in an increase in pollutant loadings at the POTW; and

(iii) Whether the modification would result in less stringent requirements being imposed on Industrial Users of the POTW.

PART 122—[AMENDED]

14. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

15. 40 CFR 122.63 is proposed to be amended by adding paragraph (g) to read as follows:

§ 122.63 Minor modifications of permits.

* * * * *

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR 403.18) as enforceable conditions of the POTW's permit.

* * * * *

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June 12, 1986

Part IV

Small Business Administration

13 CFR Part 107

Small Business Investment Companies; Interim Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

[Rev. 6; Amdt. 2]

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: Section 18004 of Pub. L. 99–272, effective April 7, 1986, established a new section 320 of the Small Business Investment Act. That new section removes the authorization of the Federal Financing Bank to purchase debentures issued by Small Business Investment Companies and guaranteed by Small Business Administration, effective October 1, 1985. Section 18005 of the same Pub. L. authorized SBA to establish a mechanism by which certificates of interest backed by trusts or pools of the guaranteed debentures may be sold to the public and required that SBA take certain actions regarding the registration and conduct of such sales. These regulations implement these two mandatory statutory provisions.

EFFECTIVE DATE: June 12, 1986. Comments by July 14, 1986.

ADDRESS: Written comments may be sent to: Robert G. Lineberry, Deputy Associate Administrator for Investment, U.S. Small Business Administration, 1441 "L" St., NW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John L. Werner, Director, Office of Investment, U.S. Small Business Administration, 1441 "L" St., NW., Room 810, Washington, DC 20416 (202) 653–6584.

SUPPLEMENTARY INFORMATION: Prior to the enactment of Pub. L. 99–272, for the past 12 years, the Small Business Investment Company (SBIC) program has been funded by the purchase by the Federal Financing Bank of debentures issued by SBIC's and guaranteed by SBA. Public Law 99–272 prohibits use of such financing after its effective date. That same law provides a new mechanism to permit the funding to take place in the public market place. Under the new law SBA is authorized to guarantee timely payment of principal and interest on trust certificates issued against trusts or pools of debentures issued by SBIC's and guaranteed by SBA pursuant to the pre-existent authority of section 303 of the Small Business Investment Act. These regulations implement this new authority. Read together with 13 CFR 201(b)(2), SBA will now be able to finance the program by the sale in the private capital markets of either individual SBA guaranteed debentures, pools of such debentures, or SBA-guaranteed trust certificates backed by trusts or pools of such debentures.

Section 18005 of Pub. L. 99–272 amended the Small Business Investment Act to provide a new section 321 which authorizes the issuance of the trust certificates and specifies certain of their terms and conditions. In addition, the trust certificates may be guaranteed by SBA, under such terms and conditions as SBA deems appropriate, to entitle their holders to the timely payment of a proportionate share of principal and interest in a pool of SBIC issued debentures which are guaranteed by SBA. These guarantees carry the full faith and credit of the United States. SBA may not collect any fee in connection with issuing a guarantee on the trust certificates. In the event that a debenture in the pool is prepaid, such prepayment will be passed through to the certificate holders, and if guaranteed, the guarantee of timely payment of principal and interest on the trust certificate will be reduced proportionately to the amount of principal and interest the prepaid debenture represents in the pool. Interest on prepaid or defaulted debentures accrues only through the date of payment. During the term of a trust certificate, it may be called for redemption by SBA due to prepayment of all of the debentures making up the pool it is issued against. Finally, if SBA pays any claims under a guarantee of a trust certificate, the statute provides that SBA will be subrogated fully to the rights satisfied by the payment. Section 107.201(c)(1) (2) (3) (4) (5) and (6) of these regulations effect these provisions of law.

Section 107.201(c)(2)(iv) of these regulations provides that SBA will appprove the formation of each pool or trust of debentures against which trust certificates are issued. It is expected that a pooling process will be developed by SBA shortly, and to the extent necessary publication of regulations relevant to that process in the **Federal Register** will ensue.

Section 107.201(c)(2)(v) of these regulations provides that SBA will establish applicable pool attributes and fees to be collected in connection with pools or trusts and trust certificates, and will disclose in the **Federal Register** such pool attributes and fees. In compliance with other provisions of the Public Law, SBA is presently consulting with members of the investment community to ascertain information needed to develop such attributes and fees, and contemplates that disclosure by publication in the **Federal Register** of these matters, to the extent necessary, will take place shortly after publication of these regulations.

The Pub. L. also requires that SBA contract with an agent to provide for the registration of pools or trusts, debentures and trust certificates and for other attendant duties. Section 107.201(c)(3) enumerates the duties SBA forsees the registration agent performing. SBA is presently in the process of entering into the necessary contract(s) for the performance of these duties.

The Pub. L. also provides that certain terms and conditions of trust certificates must be disclosed to the purchaser by the seller before the sale of the certificate. In addition, it provides SBA the authority to regulate brokers and dealers who deal in the sale of certificates. Section 107.201(c)(4) effects these provisions. It is contemplated that additional provisions as SBA deems necessary governing the performance of brokers and dealers dealing in trust certificates may be promulgated.

Executive Order 12291, Regulatory Flexibility and Paperwork Management

For the purposes of compliance with E.O. 12291 of February 17, 1981, SBA hereby certifies that this proposal, taken as a whole, does not constitute a major rule for the purposes of Executive Order 12291. In this regard we are certain that the annual effect of this rule on the economy will be less than $100 million. In addition, this final rule will not result in a major increase in costs or price to consumers, individual industries, Federal, State, and local government agencies or geographic regions, and will not have significant adverse effects on foreign or domestic competition, employment, investment, productivity or innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets.

For the purposes of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, this Interim Final rule will not have a significant economic impact. The level of funding available for the SBIC program as a result of this rule remains unchanged. The only differences from the existing program are the method of funding, identity of the purchaser(s) of debentures, and the availability of trust certificates.

SBA certifies pursuant to section 608 of the Regulatory Flexibility Act (5 U.S.C. 608) that this Interim Final Rule is being published pursuant to an emergency. The reason for the emergency is the statutory deadline of

June 7, 1986, which was imposed on SBA for the promulgation of final rules and regulations to implement Pub. L. 99–272.

Therefore an initial regulatory flexibility analysis is not provided. In addition, SBA certifies that there is good cause to find that the solicitation of public comment is impracticable under these circumstances. 5 U.S.C. 553(b)(B).

List of Subjects in 13 CFR Part 107

Small Business Investment Companies, Regulations, Definitions, Operational requirements, License, Borrowing of Licensee, Financing of small concerns, General provisions, Equity capital, Guarantees and commitments, Management service, control of licensee, Lawful operations, Restricted activities, Prohibitions, Examinations, Accounts, Records of reports, Compliance, Exemptions.

Accordingly, pursuant to 15 U.S.C. 687(c), § 107.201 of 13 CFR is amended as follows:

PART 107—[AMENDED]

1. The authority citation for 13 CFR Part 107 continues to read as follows:

Authority: Sec. 308(c), 72 Stat. 694, as amended (15 U.S.C. 687(c)); sec. 312, 78 Stat. 147 (15 U.S.C. 687d); sec. 315, 80 Stat. 1364 (15 U.S.C. 687g).

§ 107.201 [Amended]

2. By adding after the last sentence of § 107.201(b)(2) the following sentence:

* * * * *

(b) * * *

(2) * * * Such private or public financings arranged by SBA in its discretion may be accomplished by the sale of individual Debentures, aggregations of Debentures, or pools or trusts of Debentures issued or sold in connection with § 107.201(c).

* * * * *

3. By redesignating the present paragraph (c) User fee, as paragraph (d) User fee,.

4. By adding the following paragraph (c):

* * * * *

(c) *Financing by Issuance and Guarantee of Trust Certificates.* (1) *Definitions.*—(i) *Debentures.* Obligations issued by Licensees pursuant to section 303(a) of the Act and guaranteed by SBA pursuant to section 303(b) of the Act.

(ii) *Trust Certificates (TCs).* Certificates issued by SBA or its agent representing ownership of all or a fractional part of a trust or pool of Debentures.

(iii) *Trust.* An aggregation of Debentures approved by SBA.

(iv) *Pool.* An aggregation of Debentures approved by SBA.

(v) *Central Registration Agent (CRA).* One or more agents of the SBA appointed for the purposes of issuing TCs, and performing the functions enumerated in subsection (3) hereof.

(vi) *Guaranty Agreement.* The contract issued by SBA which sets forth SBA's obligation to guarantee the timely payment of principal and interest on Debentures and its rights in connection with the guarantee.

(2) *Authority.* Section 321(a) of the Act authorizes SBA or its CRA to issue TCs and SBA to guarantee the timely payment of the principal and interest thereon. Any guarantee by SBA of any TC is limited to the extent of the principal and interest due on the Debentures in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under the guarantee of any TC. The SBA shall not charge or collect any fee for the guarantee of any TC.

(i) *Terms and Conditions of the TCs.* TCs shall provide for the pass-through to the holders thereof of all amounts of principal and interest paid on the Debentures composing the Pool or Trust against which they are issued. SBA shall determine the legal and other terms and conditions of TCs in conjunction with the Secretary of the Treasury and its own statutory authority and such other requirements as may be mandated by law. The interest rate on the SBA guaranteed SBIC Debentures composing a Trust or Pool shall be determined pursuant to Section 303(b) of the Act.

(ii) *Effects of Prepayment of Debentures on a TC.* The rights, if any, of an SBIC to prepay any Debenture are established by the terms of the Debentures and no such right is created or denied by these regulations. SBA's rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture. Any prepayment of a Debenture either voluntarily on the part of the issuer Licensee pursuant to the terms of the Debenture, or by the SBA pursuant to the terms of the Guaranty Agreement relating to the Debenture, shall reduce a guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal and interest such prepaid Debenture represents in the Trust or Pool backing such TC. To the extent of any such prepayment, SBA shall be discharged from its guaranty obligation to the holder or holders of any TC, or any successor or transferee of such holder, whether or not such successor or transferee shall have notice of any such prepayment. Interest on prepaid Debentures shall accrue only through the date of such voluntary prepayment or SBA payment, as the case may be. In the event all Debentures constituting a Trust or Pool are prepaid, SBA may call all TCs backed by such Trust or Pool for redemption in consideration for payment of the unpaid principal and interest on the TCs. *Provided, however,* that in the case of the prepayment of a Debenture either voluntarily by the issuer pursuant to the terms thereof, or by SBA pursuant to the provisions of the Guaranty Agreement relating to the Debenture, SBA shall directly or through its CRA pass through pro rata to the holders of the TCs any such prepayment including any prepayment penalty paid of the obligor SBIC pursuant to the terms of the Debenture.

(iii) *SBA Ownership Rights.* In the event SBA pays a claim under the guarantee of a TC, it shall be subrogated fully to the rights satisfied by such payment; and no state law, and no Federal law, shall preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee.

(iv) *Pool or Trust Approval.* SBA shall approve the information of each pool or trust.

(v) *Pool or Trust Attributes.* SBA may, in its discretion, establish the size of the pools and their composition, the interest rate on the TCs issued against Trusts or Pools, fees, discounts, premiums and other charges made in connection with the pools, trusts, and TCs, and any other characteristics of a pool or trust it deems appropriate. SBA will from time to time notify the public of the approved pool attributes by publication of such attributes in the **Federal Register.**

(3) *Functions of the CRA.* Pursuant to a contract entered into with SBA, the CRA shall perform the following functions as agent of the SBA.

(i) *Issuance of the TCs.* Upon the formation of any Pool or Trust approved by SBA, CRA shall issue TCs, in the form prescribed by SBA, upon the primary sale of Debentures, and shall issue or effect the transfer of TCs upon the sale of original issue TCs in any secondary market transaction.

(ii) *Receipt of Amounts Due on Debentures.* CRA shall receive payments from Licensees of amounts due on Debentures, and amounts paid under voluntary prepayments or prepayments by SBA pursuant to the terms of the relevant Guaranty Agreements.

(iii) *Payments of Amounts Due on TCs.* CRA shall pay periodic payments

as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures.

(iv) *Custody of Debentures and Documentation.* CRA shall hold and safeguard all Debentures constituting Trusts or Pools and shall release, upon instructions of SBA the Debentures paid in full at maturity or prepaid in full prior to maturity. CRA shall also be custodian of such other documentation as SBA shall direct by written instructions.

(v) *Registration of Debentures and TCs.* CRA shall provide for the registration of all primary sales of Debentures, all Pools and Trusts and all TCs. Such registration shall at a minimum include with respect to each sale of Debentures the identification of the selling Licensee; the interest rate to be paid on the Debentures; commissions, fees, and/or discounts paid to brokers and dealers in TC or others; identification of each purchaser and any subsequent purchaser of any TC; the interest rate paid or to be paid on any TC; the price paid by any purchaser for a TC; the fees of the CRA; and such other information as the SBA may deem appropriate or that may be customary in the markets for transactions of similar type.

(vi) *Fidelity Bond or Insurance.* Such Agent shall provide a fidelity bond or insurance in such amount as necessary to fully protect the interest of the government.

(vii) *Other Necessary Functions.* Such other functions as may be necessary to implement the provisions hereof.

(viii) *Fees.* SBA may establish a fee structure for the performance of services by th CRA and will publish such fees in the **Federal Register** from time to time for public review and comment.

(4) *SBA Regulation of Disclosure and Brokers and Dealers.*—(i) *Disclosure to Purchasers.* Prior to any sale of a Debenture, or a TC pursuant to the provisions hereof, SBA shall require the seller, or the broker or dealer as agent for the seller, in the form prescribed or approved by SBA, to disclose to the purchaser of a Debenture or a TC specified information on the terms, conditions, and yield of such instrument.

(ii) *Brokers and Dealers.* Each broker, dealer, and Pool or Trust assembler approved by SBA or its agent pursuant to these regulations shall be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. They shall also be in good standing with SBA as determined by the SBA Associate Administrator for Finance and Investment (see subsection (iv) below) and shall provide a fidelity bond or insurance in such amount as necessary to fully protect the interest of the government.

(iii) *Suspension and/or Termination of Broker or Dealer.* SBA shall exclude from the sale and all other dealings in debentures or TCs any broker or dealer:

(A) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(B) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for Debentures or TCs, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(C) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures or TCs may be terminated.

(D) When such broker or dealer has failed to make full disclosure of the information required by § 107.201(c)(4)(i) of this Part, such broker's or dealer's participation in the market for Debentures or TCs may be terminated.

(iv) Proceedings to terminate such broker's or dealer's participation in the market for such Certificates shall be conducted in accordance with Part 134 of this Title. SBA may, for any of the reasons stated above, suspend the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to Part 134 of this Title. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§ 134.32(b)(7) and 134.34.

(5) *Access to Records.* The CRA and any broker, dealer and Pool or Trust assembler operating under these regulations shall make all books, records and related materials associated with Debentures and TCs available to SBA for review and copying purposes. Such Access shall be at the place of business during normal business hours.

(6) *Selling Debentures and TCs.* The function of locating purchasers, and negotiation and closing the sale of Debentures and TCs may be the function of the SBA or an agent appointed by SBA. Nothing in these regulations shall be interpreted to prevent the CRA from acting as SBA's agent for this purpose.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 29, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-13009 Filed 6-11-86; 8:45 am]

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Federal Register

Thursday
June 12, 1986

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29

Airworthiness Standards; Helicopter Instrument Flight; Notice of Proposed Rulemaking, Request for Comments, and Notice of Public Meeting

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 25010; Notice No. 86-7]

Airworthiness Standards; Helicopter Instrument Flight

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), request for comments, and notice of public meeting.

SUMMARY: This notice proposes to amend the helicopter instrument flight airworthiness requirements for the approach and landing flight phases to permit flight at airspeeds below the normal minimum instrument flight speed (V_{MINI}). Helicopters certificated to date have had a V_{MINI} of approximately 50 knots or greater. Requiring the helicopter to maintain at least V_{MINI} while executing an approach in instrument meteorological conditions (IMC) may require an excessive distance to slow the helicopter to landing or zero speed after entering visual meteorological conditions (VMC) at the approach decision height. This distance effectively eliminates practical-size heliports from being used during instrument meteorological conditions. Permitting low airspeed instrument approaches, similar to normal visual decelerating approaches, will significantly improve the utility of the helicopter.

DATES: Public meeting will be held at 9 a.m. on February 24, 1987. Comments must be received on or before March 20, 1987.

ADDRESSES: Comments on this notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25010, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in duplicate to Room 916, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25010. Comments may be inspected in Room 916, between 8:30 a.m. and 5 p.m., weekdays, except holidays.

The public meeting will be held in the Training Room, Building 3B, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, beginning at 9 a.m. on February 24, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Jim S. Honaker, Regulations Program Management Staff (ASW-111), Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101, commercial telephone (817) 877-2552, or FTS 734-2552.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25010." The postcard will be date/time stamped and returned to the commenter.

Availability of This Notice

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

An NPRM with helicopter IFR requirements was published December 18, 1980 (45 FR 83424), and adopted March 2, 1983 (48 FR 4374; January 31, 1983). The FAA and NASA have continued helicopter instrument flight rules (IFR) studies and analyses of various other related activities, especially helicopter decelerating instrument approaches. Excellent summaries of some of these FAA/NASA studies are included in NASA Technical Memorandum 84388, "NASA/FAA Experiments Concerning Helicopter IFR Airworthiness Criteria," July 1983, by J. Victor Lebacqz, Ph.D., Ames Research Center, Moffett Field, California, and in the paper "Ground Simulation Investigation of Helicopter Decelerating Instrument Approaches," by J. Victor Lebacqez, published in the American Institute of Aeronautics and Astronautics Journal of Guidance, Control, and Dynamics, Vol. 6. No. 5, September-October 1983, pages 330-338. Copies of both the memo and the paper are included in the docket for this MPRM. The paper concluded that there was no advantage, in terms of pilot rating of the workload, for approaches in which the deceleration occurred during a long level-off at the end of the approach. Decelerating while tracking a 6° glide slope was rated to be equally as easy as the level deceleration.

The FAA/NASA studies did not include hovering (zero groundspeed) by reference to cockpit instrumentation alone; i.e., visual flight conditions were available at some point, usually at least 100 feet above the ground, or the approach was ended by a missed approach. This NPRM is based on the concept that the final few feet of the approach and any hovering will be with visual reference outside the cockpit.

The helicopter IFR requirements established in March 1983 included validation of positive longitudinal static stability. The minimum airspeed used in this validation became the minimum authorized airspeed, V_{MINI}, to be used during all instrument flight. No helicopter certification applicants have selected a V_{MINI} below 40 knots. Essentially all applicants have selected 50 knots or above. Lower airspeeds have not been selected because of several factors.

First, there are no heliports with the necessary guidance equipment to require a slower speed at decision height. Since all presently authorized instrument approaches for helicopters are to multithousand-foot runways, there is no need to provide the capability of breaking out of the weather and stopping within a minimum distance.

Second, even if adequate ground facilities were available, are the helicopters capable of being safely flown to lower airspeeds? The FAA/NASA studies indicated that the basic flying qualities of most present day helicopters do not exhibit acceptable characteristics for instrument flight; however, adding a readily available stability augmentation system(s) to the helicopter can result in the pilots finding the instrument flight characteristics to

be satisfactory. All but a very few of the helicopters certificated to date required these augmentation systems to comply with basic IFR requirements.

The FAA/NASA studies did not specifically examine the static longitudinal stability of augmented helicopters during low airspeeds, but the data for these types of systems that are available from various flight testing and research activities indicate that the stability usually varies from positive at 60 knots and faster, to just slightly positive at 30 to 40 knots and perhaps neutral or only slightly positive at approximately 20 knots. This change in the flight characteristics was rated satisfactory in the FAA/NASA studies.

Pilot workload during instrument flight has been used as a measure of acceptability of flight characteristics. Allowances have been made for two-pilot operation on the assumption that one pilot does nothing but control the aircraft while the second pilot accomplishes communication, navigation, and any other secondary flight task. The approach and landing phases of flight are recognized as high cockpit workload periods regardless of crew size. While considerable effort has been made through cockpit design, navigation/control procedures, and aircraft flight characteristics to keep the workload during approach and landing as low as possible, various studies have shown that for the relatively short period of time involved in the approach and landing, the pilot can accept a higher workload with no degradation in required flight path control accuracy.

Discussion

Today, a typical helicopter precision instrument approach is flown with a final approach airspeed of about 70 knots, on a 3° glideslope, to an airport runway. The normal Category I minimum weather conditions for instrument landing system (ILS) approaches are a 200-foot ceiling and one-half mile visibility (obstructions or other airport features frequently dictate a higher weather minimum). Approaches and landings with weather conditions less than the 200-foot ceiling and one-half mile visibility (Category II and III) require significantly more airport equipment, aircraft systems, and crew training.

When the helicopter breaks out of the clouds at 200 feet above the ground, its rate of descent is about 370 feet per minute (fpm) and it is about 3,800 feet from the nominal touchdown point on the runway. If the 70-knot approach speed is continued, it would take just over one-half minute from breakout to the touchdown point. (Of course the helicopter will actually be decelerated for landing, but the steady 70-knot airspeed is being used as a constant reference for this discussion). If the approach is within acceptable horizontal and vertical alignment at breakout (a missed approach should have been initiated if not in alignment), the pilot knows that there is a large airport environment, relatively level and free of obstacles, that will be reasonably lighted for the deceleration and any needed maneuvering. As long as the pilot remains below the clouds at 200 feet, very gentle maneuvering will bring the helicopter to the desired position and condition for landing. This normal airport environment actually provides several minutes and several miles of maneuvering space after breakout to terminate the approach at an off-runway helicopter landing pad.

A vastly different problem is encountered when the precision approach is to a heliport. The available space for deceleration and maneuvering to a landing will be very small compared to an airport. Approach angles steeper than the 3° airport glidepath are desired to reduce the required airspace. The steepest glideslope that has been most acceptable in the FAA/NASA studies and other studies of various approach angles is 6°. Satisfactory flight characteristics have not been consistently achieved at approach angles greater than 6°.

When the helicopter breaks out of the clouds at 200 feet above the ground on a 6° glideslope with a 70-knot airspeed, the rate of descent will be about 730 fpm. The helicopter will be about 1,900 feet from the touchdown point which at a continued 70-knot airspeed will require only a 16-second flight time. The pilot workload is considerably higher after breaking out of the clouds than at any other time during this approach. First, the pilot must switch his vision from inside the cockpit to outside, visually acquire the landing site, maneuver the helicopter on an acceptable flight path, and decelerate to landing spot without losing visual reference. An acceptable flight path and deceleration includes consideration of the helicopter cockpit design so that pulling the nose up does not reduce forward visibility to the extent that the landing spot is obscured. Also, there must be consideration of long tail booms or other configurations that limit attitude near the ground and, finally, consideration of maneuvers and attitudes that would cause passenger discomfort or concern.

Also, the relatively rapid deceleration from the break out airspeed of 70 knots requires a large reduction in engine power and then an even larger increase in engine power as the airspeed approaches zero. Controlling the yawing moments resulting from these power changes (with a single rotor helicopter) further adds to the pilot workload. The FAA flight tests to develop helicopter approach procedures to be used with microwave landing systems (MLS) have shown that the heliport approach, after breaking out of the clouds at 70 knots, is a formidable task, especially at night or in poor visibility conditions.

This proposed rulemaking action permitting the use of slower final approach speeds or deceleration to 30 to 40 knots (or less) at breakout significantly enhances the acceptability of precision approaches to heliports.

At first it may appear that decelerating to slow speeds while still flying on instruments results in only degraded flight characteristics. Deceleration in itself is an added pilot workload task, the helicopter static stability is reduced, the time spent in the higher workload final approach flight phase is longer, and when the airspeed drops below 45 to 55 knots, the helicopter is on the "backside" of the power-required curve where different flight techniques must be used.

However, the FAA/NASA studies showed the decelerating approach was assigned Cooper-Harper pilot ratings equal to the constant speed approaches while maintaining the same accuracy. Probably the most significant factor for these same ratings is "time." The normal and proposed MLS final approach to a heliport is about 2 miles long, so the time spent in this flight phase would almost always be less than 5 minutes. As the FAA/NASA studies indicated, pilot can accept a small increase in workload for this short period of time.

The helicopter pilot encounters the reduced stability during every normal (decelerating) visual approach and landing. Also, during every normal approach and landing, the pilot uses the same "backside" power-required flight techniques as are required during the proposed decelerating instrument approaches. Some added instrument training may be required because the control response to normal instrument displays is different from that used with the "frontside" flight techniques. While these techniques can be readily and satisfactorily used with the common artificial horizon and ILS cross pointer displays, much better displays are readily available. Therefore, the pilot workload is not significantly changed, the flight characteristics are considered to be acceptable to the pilots, are common to normal helicopter

operations, and are well within flight characteristic regimes rated acceptable by pilots.

In addition, the pilot workload after breaking out of the weather in close proximity to the ground on the heliport approach is significantly reduced. The speed is near the correct speed for that altitude and distance from the landing point during a normal visual approach. The helicopter attitude and engine power settings are near those necessary to complete the approach to a hover without large changes. At a steady airspeed of 35 knots, flying to the landing spot 1,900 feet away from the breakout point will require just greater than one-half minute, and the rate of descent at breakout will be back down to about 370 fpm.

Overall, the decelerating or slow speed approach requires a slight increase in pilot workload down to decision height, is as accurate as a higher constant speed approach, significantly reduces the pilot workload after breakout, and, in total, makes the steep approach to a heliport an acceptable maneuver.

Economic Impact

The FAA has determined that unquantifiable benefits would accrue to manufacturers and operators from the adoption of this notice. The anticipated benefit of the proposed revision permitting low airspeed instrument approaches would be the increased use of the capabilities of the helicopter. As presently written, the regulations preclude IFR flight at airspeeds below approximately 50 knots. The distance required to slow a helicopter from approximately 50 knots to zero or landing speed effectively limits approaches in instrument meteorological conditions to multithousand-foot runways. The proposed slow instrument approach speed would enable Parts 27 and 29 rotorcraft to safely break out of weather and stop within a minimum distance. The added capability would allow helicopters to use practical size heliports during instrument meteorological conditions. Quantification of these benefits is not possible for two reasons. First, there is uncertainty concerning the number of manufacturers and operators who will take advantage of the additional capability provided by the proposal. Second, the FAA has been unable to estimate the number of heliports that will elect to acquire the necessary guidance equipment to permit a slower speed at decision height.

Manufacturers and operators will not incur additional costs as a result of the proposed regulation. The proposal affects a portion of the regulation that is optional. Certification for IFR flight is not required for the basic helicopter. The FAA assumes that the entrepreneurial incentive for incurring increases in equipment costs and system complexity is the belief that the benefits associated with greater helicopter utilization will exceed costs. Hence, only if the manufacturer (or operator) determines that there are possible economic gains to justify the added equipment and system cost, does the option of helicopter instrument flight as modified by this proposal become a consideration. In addition, the specific procedures or equipment requirements are not defined for the majority of the proposal. The attainment of satisfactory flight characteristics is the major consideration—how they are obtained is left to the discretion of the applicant. If an applicant desires IFR approval without the low speed approach capability, there is no change in the requirements to be met.

One of the major transportation system advantages of the helicopter under VMC is that only relatively small land areas are required to take off and land as compared to that of the airport size needs of conventional airplanes. However, when IMC occurs, the present helicopter and heliport capabilities and limitations are such that helicopter operations cease or essentially become like conventional airplane operations to and from airports. The proposed regulation changes would permit the helicopter to overcome these limitations. Accordingly, the FAA concludes that only unquantifiable benefits will result from the enactment of the proposed amendments.

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, the proposed amendments to Parts 27 and 29 contained in this notice, at promulgation, will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the finding that the proposal affects a portion of the regulation that is optional. Accordingly, any equipment and related costs voluntarily incurred by manufacturers and operators to permit greater utilization of the helicopters are not considered to be a result of regulation. The RFA requires agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines for rulemaking officials to apply when determining if a proposed or existing rule has a significant economic impact on a substantial number of small entities and guidance for the conduct of regulatory flexibility analyses and reviews. The FAA small entity size standards criteria define a small helicopter manufacturer as an independently owned and managed firm having fewer than 75 employees. Under the FAA size standard criteria, only one manufacturer subject to the proposed amendment to Parts 27 and 29 has fewer than 75 employees. Accordingly, the proposed amendments to Parts 27 and 29, if adopted, will not impact a substantial number of small entities.

There are no known diseconomies of scale associated with the anticipated certification costs. This proposed change to the certification rules for Parts 27 and 29 helicopter manufacturers is not expected to raise any barrier to entry into this market for small manufacturers.

Impact on International Trade

The impact, if any, of the proposed amendment on the international trade is undetermined. The FAA invites public comments on the impact this rule might have on international trade.

Conclusion

This notice proposes changes to permit increased utilization of helicopters during instrument meteorological conditions. The FAA has determined that this document is not major as defined in Executive Order 12291 and is not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, under the criteria of the Regulatory Flexibility Act and for the reasons stated above, the FAA certifies that these proposals, if adopted, will not have a significant economic impact on a substantial number of small entities. The FAA has also determined that the economic impact of these proposals is so minimal that preparation of a full economic evaluation is not warranted.

List of Subjects in 14 CFR Parts 27 and 29

Air transportation, Aircraft, Aviation safety, Safety, Tires, Rotorcraft.

The Proposed Amendments

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

Appendix B to Part 27—Airworthiness Criteria for Helicopter Instrument Flight

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Appendix B to Part 27 of the FAR (14 CFR Part 27) as follows:

1. The authority citation for Part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By revising paragraph II(c) to read as follows:

II. *Definitions.* * * *

* * * * *

(c)(V_{MINI} means instrument flight minimum speed used in complying with minimum limit speed requirements for instrument flight except during approach, landing, and missed approach for helicopters equipped and certified for the lower speed.

Explanation: The proposed change adds only the exception phrase, but this is probably the most significant portion of the total change. The definition of V_{MINI} has precluded slow speed or decelerating approaches. The proposed change will permit this. The remainder of the changes are based on the increased capability offered by this definition change.

3. By revising paragraph III by adding a new title, by redesignating the present text as paragraph (a), and by adding a new paragraph (b) to read as follows:

III. *Controllability.*

(a) *Trim.* * * *

(b) *Missed approach.* During a missed approach, the helicopter must be safely controllable and maneuverable while accelerating from the minimum approved approach speed to V_{Y1} while using not less than maximum continuous power.

Explanation: A proposed new paragraph (b) is added to this section; however, this is not a new requirement. The evaluation of flight characteristics during missed approaches was specifically addressed in the interim Airworthiness Criteria for Helicopter Instrument Flight, dated December 15, 1978. These interim criteria were the basis for full instrument flight certification until March 1983 when the present standards became effective. Evaluation of missed approach flight characteristics is considered to be included in the "typical IFR flight maneuvers" to be evaluated as addressed in Advisory Circular 29-2 "Certification of Transport Category Rotorcraft" and in the similar published draft advisory circular for normal category rotorcraft. This NPRM proposes no change in the missed approach requirements if airspeeds above V_{MINI} are used for approaches. If airspeeds below V_{MINI} are to be permitted for approach and landing, there is sufficient concern about missed approach handling qualities that a specific evaluation requirement should be included in the criteria.

There is also concern about the helicopter performance capabilities as related to the low speed approach. Normal and Category B helicopters are considered to be single-engine aircraft. That is, missed approach performance in those helicopters must be based on all engine(s) operation because if the engine quits, the aircraft has no guarantee of continued flight. Therefore, there is no degraded performance missed approach to be considered in the standards. The operating rules describe where and under what circumstances single-engine aircraft may make instrument approaches. Whether the final approach speed of these aircraft is above or below V_{MINI} should not be a factor in these approaches.

Transport Category A helicopters are presently required to define the one-engine-inoperative performance including landing decision points. The performance characteristics and approach parameters for a specific heliport must be evaluated for compatibility. A change of the Category A operating weight or other performance influencing factor could be necessary to make the performance capability compatible with the approach requirements. This is comparable to runway length being a factor in determining the permissible takeoff weight of an airplane.

The multiengine normal or Category B helicopter with engine isolation would have to be evaluated from a design and operational viewpoint to determine whether the helicopter should be considered "single-engine" or "Category A."

4. By revising paragraph IV(a) to read as follows:

IV. *Static longitudinal stability.*

(a) *General.* The helicopter must possess positive static longitudinal control position and force stability at critical combinations of weight and center of gravity at the conditions specified in paragraph IV (b) or (c) of this appendix, as appropriate. The stick force must vary with speed so that any substantial speed change results in a stick force clearly perceptible to the pilot. For single approval, the airspeed must return to within 10 percent of the original trim speed when the control force is slowly released from any speed within the range specified in paragraphs IV (b)(1) through (b)(4) of this appendix.

* * * * *

Explanation: Positive static longitudinal control position stability is added to this paragraph. This not a change, as positive position stability is required in the basic VFR requirement. However, some control concepts could result in positive force stability and negative position stability. The positive position requirement is added to emphasize that both position and force stability must be positive.

The last sentence is changed to correct and clarify the meaning. In the present wording, the stick is released for each trim condition; that is, the stick is released when at trim so there is no return to within 10 percent of the trim speed.

5. By revising paragraph IV(b)(5) to read as follows:

IV. *Static longitudinal stability.*

* * * * *

(b) * * *

(5) *Approach.* During approach at all approved weights and c.g.'s, the helicopter must be safely controllable and maneuverable.

(i) If approach speeds below V_{MINI} are not to be approved, longitudinal static stability must be shown to be positive with any airspeed from 0.7 times minimum recommended approach airspeeds to the maximum recommended approach airspeed plus 20 knots with—

(A) The helicopter trimmed at the minimum and maximum recommended approach speeds;

(B) Power required to maintain a 3° glide path and the steepest approach gradient for which approval is requested; and

(C) Landing gear retracted and extended, if applicable.

(ii) If approval is requested for approach airspeeds below V_{MINI}, the longitudinal control position and force versus speed curves must not have a negative slope within a range of airspeeds ± 5 knots either side of any airspeed between V_{MINI} and the higher of 25 knots or the minimum approved approach speed, with—

(A) The helicopter trimmed at V_{MINI} and the higher of 25 knots or the minimum approved approach speed;

(B) Power required to maintain a 3° glideslope and to maintain the steepest approach gradient for which approval is requested; and

(C) The landing gear extended, if applicable.

Explanation: The present requirements are not changed but the proposal defines more clearly the airspeeds to be used for evaluation of the longitudinal static stability. It should be noted that although trim airspeeds are identified, the basic requirement is for positive stability at "any airspeed," so where trim airspeeds are widely separated or intermediate airspeed stability characteristics are questionable, any other airspeed may be used for test. If approval of approach airspeeds below V_{MINI} are requested, the additional stability requirements are identified. Use of speeds below V_{MINI} would be authorized only during the final approach of a precision approach and landing where a higher pilot workload for a short period of time is acceptable. The ILS/MLS final approach tracking task requires constant pilot attention. With either an automatic approach coupler or a flight director system, the pilot is devoting nearly all his attention to flying or monitoring the helicopter since there there are requirements for many rapid, small flight control corrections during this flight phase. Under these circumstances, the FAA/NASA studies indicated that a reduced level of longitudinal static stability over a relatively small speed range would be satisfactory.

The majority of the speed range between V_{MINI} and 25 knots is on the back side (low speed side) of the power-required curve

where different control techniques must be used. As the airspeed approaches 25 knots, the slope of the power-required curve becomes quite steep. Small changes in speed result in large changes in power required or in vertical speed. These large changes in flight characteristics with small changes in airspeed could distort the apparent longitudinal stability characteristics, if examined over a normal speed range, to such an extent that the classic methods would indicate a completely unacceptable aircraft.

As previously implied, flight on the back side of the power-required curve requires airspeed control. Small vertical corrections required to track a glidesclope are not made with airspeed/pitch attitude as can be done when operating on the front side of the power-required curve. Power/collective control must be the primary control used in glideslope tracking in decelerating or low airspeed approaches. Therefore, the classic collective fixed longitudinal static stability has even less importance in this flight environment. Examining the flight characteristics over a small airspeed range is more consistent with the probable operational needs.

6. By revising paragraph IV(c) to read as follows:

IV. *Static longitudinal stability.*

* * * * *

(c) Helicopters approved for a minimum crew of two pilots must comply with the provisions of paragraphs IV (b)(2) and (b)(5)(i) of this appendix. If approach speeds below V_{MINI} are requested, compliance with paragraph (b)(5)(ii) must also be shown.

* * * * *

Explanation: This proposal adds the requirements for use of airspeeds below V_{MINI} for the two pilot case, if requested.

7. By revising paragraph V (a) and (b) to read as follows:

V. *Static lateral-directional stability.*

(a) Static directional stability must be positive throughout the approved ranges of power, vertical speed, and airspeeds above V_{MINI}. In straight, steady sideslips up to ± 10° from trim, directional control position must increase in approximately constant proportion to the angle of sideslip. At greater angles up to maximum sideslip angle appropriate to the type, increased directional control position must produce increased angle of sideslip

(b) During sideslips up to ± 10° from trim throughout the approved ranges of power, vertical speed, and airspeeds above V_{MINI}, there must be no negative dihedral stability perceptible to the pilot through lateral control motion or force. Longitudinal cyclic control movement with sideslip must not be excessive.

Explanation: This proposal carries forward the concept that static-lateral directional stability requirements are only meaningful above a reasonable airspeed; i.e., V_{MINI}. Without specifying airspeeds above V_{MINI}, the present wording would imply a requirement down to zero airspeed.

8. By revising paragraphs VI (a) introductory text, (b) introductory text, and (b)(3) to read as follows:

VI. *Dynamic stability.*

(a) Dynamic stability for single-pilot approval at airspeeds above V_{MINI}:

* * * * *

(b) Dynamic stability for approval with a minimum crew of two pilots and for all approvals at approach speeds below V_{MINI}:

* * * * *

(3) Any oscillation having a period of 10 seconds or more, or any aperiodic response, may not achieve double amplitude in less than 10 seconds.

Explanation: The dynamic stability requirements are the same at speeds above V_{MINI} except for adding the aperiodic response requirement for two-pilots approvals. The dynamic stability requirements are relaxed for airspeeds below V_{MINI} for the single pilot case; however, two pilots do not justify further reduction of the requirements. The ILS/MLS final approach tracking requires constant pilot attention, especially at airspeeds below V_{MINI}. Under those circumstances a reduced level of dynamic stability was acceptable during the FAA/NASA tests. The minimum aperiodic criteria are added to ensure that any divergent responses are slow enough to be readily compensated by expected pilot actions. The 10 seconds to double amplitude is between the criteria of acceptable and excessive pilot workload as specified in MIL-F-83300 (Air Force specification for V/STOL handling qualities). Also, the 10-second criteria are compatible with other NASA test results.

9. By revising paragraph VIII by removing the "and" at the end of paragraph (a)(1); by removing the period at the end of paragraph (a)(2) and inserting "; and" in its place; and by adding a new paragraph VIII(a)(3) to read as follows:

VIII. *Equipment, systems, and installation.*

(a) * * *

(3) For helicopters using approach speeds less than V_{MINI}:

(i) A radio altimeter system.

(ii) Display(s) which provides the relationship of speed, position, and landing area.

(iii) An airspeed system that provides repeatable indications at all speeds between V_{MINI} and translational lift speed or minimum approved approach speed.

(iv) A flight control guidance system that consists of either an automatic approach coupler or a flight director system. A flight director system must display computed information as steering commands in relation to the ILS/MLS localizer, glideslope, and speed on the same instrument. An automatic approach coupler must provide automatic steering in relation to the localizer, glideslope, and speed. The flight control guidance system may be operated from one of the receiving systems required by Part 91.

* * * * *

Explanation: This proposal adds the requirement for equipment that the FAA/NASA studies have indicated are necessary during approaches at speeds below V_{MINI}. A radio altimeter is a new requirement. Helicopters using approach speeds below V_{MINI} will, in most cases, use approach gradients (glideslopes) steeper than the normal 3° ILS glideslope. A 6° gradient was used during most of the FAA/NASA studies. Even at low or decelerating approach speeds, the steeper gradients result in a relatively high rate of descent at decision heights (and assumed breakout from IMC to VMC). The pilot will accept these higher rates of descent with a radio altimeter, but some concern was expressed by some of the pilots during the FAA/NASA studies if a radio altimeter was not available. Significant advantages were also found when the radio altimeter was used for annunciation of decision height.

The requirement for a display of progress of speed, position, and landing area is intentionally objective rather than specific. The low approach speeds greatly amplify the effect of any wind and, as the windspeed nears the approach airspeed, the groundspeed of the helicopter may become so low that the rate of closure to the landing site in unacceptably low. The relative direction of the wind to the helicopter and desired approach path may also induce significant tracking problems. The helicopter pilot desires a display that shows his relative position to the landing site and the rate of closure to the landing site such as that visually perceived during a visual approach. As a minimum, a distance measuring equipment (DME) system, in conjunction with the ILS/MLS, would fulfill this requirement; however, since this requires the busy pilot to mentally integrate the DME display to determine closure rate, this requirement is meant to be an incentive for new systems nearer to meeting the desires of the pilot. The addition of a groundspeed readout display would be preferred over a normal DME display only.

An airspeed system that provides repeatable information is necessary for control during the low speed final approach segment. The accuracy and calibration requirements of Parts 27 and 29 have not been changed. Precise or accurate airspeed information is much less a requirement than repeatable airspeed information. Satisfactory procedures and control can be readily developed and used with a repeatable airspeed indication. Translational lift has a significant effect on pitot-static airspeed systems; however, proper design permits steady and repeatable indications when decelerating to translational lift airspeed. This requirement does not exclude the use of nonpitot-static airspeed systems but is not intended to require them.

A flight control guidance system that consists of either an automatic approach coupler or a flight director system is required. With approach speeds below about 50 knots, the tracking task becomes difficult because any wind or turbulence is a larger percentage of the airspeed. Besides the physical relationship (i.e., groundspeed vs. airspeed vs. aerodynamics) that a wind will generate, the pilot must "learn" that large corrections are required. A simple example of the

difficulty of the approach can be envisioned where a crosswind velocity equals the forward velocity of the helicopter. In this case, the required correction to stay on the localizer centerline is 90° and, of course, the helicopter would never get to the heliport unless some other correction was made. The physical size of the heliport and placement of the ILS/MLS ground units further complicate the pilot's task. If the ILS/MLS transmitters are located at the heliport landing site, the localizer becomes extremely narrow in actual distances during the approach; that is, for the 2.5° angle for full-scale deflection of raw data indicators, the actual distance the helicopter would be off the centerline to get a full-scale deflection at a decision height of 100 feet would be only 41.5 feet compared to approximately 350 feet for an aircraft at the same point during a routine approach. The slow airspeed helps to keep this from being an impossible task, but the integration of the data to provide the right corrections must be made for the pilot, not by the pilot.

10. By revising paragraph IX(c) by redesignating the present text starting after the word "Performance." as paragraph (i) and adding a new paragraph (ii) to read as follows:

IX. *Rotorcraft Flight Manual.* * * *

c. *Performance.*

(i) * * *

(ii) If approach and landing airspeeds of less than V_{MINI} are not approved, the landing distance must be provided based on an airspeed not less than V_{MINI}, at 50 feet, and the aircraft remaining below an indicated 50 feet during deceleration from V_{MINI} for the approved approach and landing procedures.

Explanation: If airspeeds below V_{MINI} are not authorized, the landing distance, made up mostly of the VFR deceleration distance, must be emphasized to the pilot. As noted earlier, this distance can easily exceed 3,000 feet which must be included in planning for the landing.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

Appendix B to Part 29—Airworthiness Criteria for Helicopter Instrument Flight

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Appendix B to Part 29 of the FAR (14 CFR Part 29) as follows:

11. The authority citation for Part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

12. By revising paragraph II(c) to read as follows:

II. *Definitions.*

* * * * *

(c) V_{MINI} means instrument flight minimum speed used in complying with minimum limit speed requirements for instrument flight except during approach, landing, and missed approach for helicopters equipped and certified for the lower speed.

Explanation: See explanation for proposal 2.

13. By revising paragraph III by adding a new title, by redesignating the present text as paragraph (a), and by adding a new paragraph (b) to read as follows:

III. *Controllability.*

(a) *Trim.* * * *

(b) *Missed approach.* During a missed approach, the helicopter must be safely controllable and maneuverable while accelerating from the minimum approved approach speed to V_{YI} while using not less than maximum continuous power.

Explanation: See explanation for proposal 3.

14. By revising paragraph IV(a) to read as follows:

IV. *Static longitudinal stability.*

(a) *General.* The helicopter must possess positive static longitudinal control position and force stability at critical combination of weight and center of gravity at the conditions specified in paragraphs IV (b) through (e) of this appendix. The stick force must vary with speed so that any substantial speed change results in a stick force clearly perceptible to the pilot. The airspeed must return to within 10 percent of the original trim speed when the control force is slowly released from any speed within the range specified in paragraphs IV (b) through (e) of this appendix.

* * * * *

Explanation: See explanation for proposal 4.

15. By revising paragraph IV (f) to read as follows:

IV. *Static longitudinal stability.*

* * * * *

(f) *Approach.* During approach at all approved weights and c.g.'s, the helicopter must be safely controllable and maneuverable.

(1) If approach speeds below V_{MINI} are not to be approved, the longitudinal static stability must be shown to be positive with any airspeed from 0.7 times minimum recommended approach airspeed to the maximum recommended approach airspeed plus 20 knots with—

(i) The helicopter trimmed at the minimum and maximum recommended approach speeds;

(ii) The landing gear extended and retracted, if applicable; and

(iii) Power required to maintain a 3° glide path and to maintain the steepest approach gradient for which approval is requested.

(2) If approval is requested for approach airspeeds below V_{MINI}, the longitudinal control position and force versus speed curves must not have a negative slope within a range of airspeeds ±5 knots either side of any airspeeds between V_{MINI} and the higher of 25 knots or the minimum approved approach speed, with—

(i) The helicopter trimmed at V_{MINI} and the higher of 25 knots or the minimum approved approach speed;

(ii) Power required to maintain a 3° glideslope and to maintain the steepest approach gradient for which approval is requested; and

(iii) Landing gear extended, if applicable.

Explanation: See explanation for proposal 5.

16. By revising paragraph V (a) and (b) to read as follows:

V. *Static lateral-directional stability.*

(a) Static directional stability must be positive throughout the approved ranges of power, vertical speed, and airspeeds above V_{MINI}. In straight, steady sideslips up to ±10° from trim, directional control position must increase in approximately constant proportion to the angle of sideslip. At greater angles up to the maximum sideslip angle appropriate to the type, increased directional control position must produce increased angle of sideslip.

(b) During sideslips up to ±10° from trim throughout the approved ranges of power, vertical speed, and airspeeds above V_{MINI}, there must be no negative dihedral stability perceptible to the pilot through lateral control motion or force. Longitudinal cyclic control movement with sideslip must not be excessive.

Explanation: See explanation for proposal 7.

17. By revising paragraph VI to read as follows:

VI. *Dynamic stability.*

(a) Dynamic stability at airspeeds above V_{MINI}:

(1) Any oscillation having a period of less than 5 seconds must damp to one-half amplitude in not more than one cycle.

(2) Any oscillation having a period of 5 seconds or more but less than 10 seconds must damp to one-half amplitude in not more than two cycles.

(3) Any oscillation having a period of 10 seconds or more but less than 20 seconds must be damped.

(4) Any oscillation having a period of 20 seconds or more may not achieve double amplitude in less than 20 seconds.

(5) Any aperiodic response may not achieve double amplitude in less than 9 seconds.

(b) Dynamic stability for approach speeds below V_{MINI}:

(1) Any oscillation having a period of less than 5 seconds must damp to one-half amplitude in not more than two cycle.

(2) Any oscillation having a period of 5 seconds or more but less than 10 seconds must be damped.

(3) Any oscillation having a period of 10 seconds or more, or any aperiodic response, may not achieve double amplitude in less than 10 seconds.

Explanation: The proposal does not change the requirements for airspeeds above V_{MINI}. Requirements for speeds below V_{MINI} are added. They are less restrictive than those above V_{MINI} and intended to assure that there

are not rapid divergences at these slow airspeeds.

18. By revising paragraph VIII by removing the "and" at the end of paragraph (a)(1); by removing the period at the end of paragraph (a)(2) and inserting "; and" in its place; and by adding a new paragraph (a)(3) to read as follows:

VIII. *Equipment, systems, and installations.*
* * *

(a) * * *

(3) For helicopters using approach speeds less than V_{MINI}:

(i) A radio altimeter system.

(ii) Display(s) which provide the relationship of speed, position, and landing area.

(iii) An airspeed system that provides repeatable indications at all speeds between V_{MINI} and translational lift speed or minimum approved approach speed.

(iv) A flight control guidance system that consists of either an automatic approach coupler or a flight director system. A flight director system must display computed information as steering commands in relation to the ILS/MLS localizer, glideslope, and speed on the same instrument. An automatic approach coupler must provide automatic steering in relation to the localizer, glideslope, and speed. The flight control guidance system may be operated from one of the receiving systems required by Part 91.

* * * * *

Explanation: See explanation for proposal 9.

19. By revising paragraph IX(c) by redesignating the present text starting after "Performance." as paragraph (i) and adding a new paragraph (ii) to read as follows:

IX. *Rotorcraft Flight Manual.* * * *

(c) *Performance.*

(i) * * *

(ii) If approach and landing airspeeds of less than V_{MINI} are not approved, the landing distance must be provided based on an airspeed not less than V_{MINI} at 50 feet and the aircraft remaining below an indicated 50 feet during deceleration from V_{MINI} for the approved approach and landing procedures.

Explanation: See explanation for proposal 10.

Issued in Forth Worth, Texas, on June 6, 1986.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 86-13223 Filed 6-11-86; 8:45 am]

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federal register

Thursday
June 12, 1986

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 8

Federal Acquisition Regulation (FAR); Priority Status of Federal Prison Industries in the Acquisition of Services; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

Federal Acquisition Regulation (FAR); Priority Status of Federal Prison Industries in the Acquisition of Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) 8.001, 8.602, 8.603, and 8.704 which concern the priority status of Federal Prison Industries (FPI) in the acquisition of services.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 11, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86–18 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Questions have arisen concerning Federal Prison Industries' (FPI) priority status in the acquisition of services. These questions resulted from apparent inconsistencies between the FAR coverage and FPI's enabling statute. It was also found that the FAR coverage concerning possible addition of items to FPI's Schedule needed some clarification. The proposed revisions to FAR 8.001(a)(2)(iv), 8.602(b), 8.603(a)(2), and 8.704(a)(2) will make the coverage consistent with FPI's enabling statute by clarifying the fact that, in the acquisition of services, FPI does not have priority status over commercial sources. The proposed revision to FAR 8.602(c) will clarify the language concerning possible addition of items to the FPI Schedule.

B. Regulatory Flexibility Act

Incorporation of the proposed rule in the Federal Acquisition Regulation may result in a significant economic impact on a substantial number of small entities. However, information currently available is insufficient to permit a determination as to the extent of such economic impact, and comments that will permit a determination are hereby solicited.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes to FAR 8.001, 8.602, 8.603, and 8.704 do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 8

Government procurements.

Dated: June 5, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Therefore, it is proposed that 48 CFR Part 8 be amended as follows:

1. The authority citation for Part 8 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137, and 42 U.S.C. 2453(c).

8.001 [Amended]

2. Section 8.001 is amended by removing in paragraph (a)(2)(iv) the word "other".

3. Section 8.602 is amended by revising paragraphs (b) and (c) to read as follows:

8.602 Policy.

* * * * *

(b) Subject to the priorities in 8.001 and 8.603, agencies are encouraged to use the facilities of FPI to the maximum extent practicable in purchasing (1) supplies that are not listed in the Schedule, but that are of a type manufactured in Federal penal and correctional institutions, and (2) services that are listed in the Schedule.

(c) If a product not listed in the Schedule is of a type normally produced by Federal penal and correctional institutions, agencies are encouraged to suggest that FPI consider the feasibility of adding the item to its Schedule.

8.603 [Amended]

4. Section 8.603 is amended by adding in paragraph (a)(2)(ii) the words ", or commerical sources." and by removing paragraph (a)(2)(iii).

8.704 [Amended]

5. Section 8.704 is ameded by adding in paragraph (a)(2)(ii) the words ", or commercial sources." and by removing paragraph (a)(2)(iii).

[FR Doc. 86–13273 Filed 6–11–86; 8:45 am]

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